THE DEPARTMENT OF THE INTERIOR'S DENIAL OF THE WISCONSIN CHIPPEWA'S CASINO APPLICATIONS VOLUME 1

HEARINGS

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

JANUARY 21, 22, 28, AND 29, 1998

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THE DEPARTMENT OF THE INTERIOR'S DENIAL OF THE WISCONSIN CHIPPEWA'S CASINO APPLICATIONS

WEDNESDAY, JANUARY 21, 1998

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The committee met, pursuant to notice, at 10:20 a.m., in room 2154, Rayburn House Office Building, Hon. Dan Burton (chairman of the committee) presiding.

Present: Representatives Burton, Hastert, Morella, Cox, Mica, Davis of Virginia, Souder, Shadegg, Sununu, Pappas, Snowbarger, Waxman, Lantos, Kanjorski, Barrett, Norton, Fattah, Cummings, and Kucinich.

Staff present: Kevin Binger, staff director; Richard Bennett, chief counsel; Judith McCoy, chief clerk; Teresa Austin, assistant clerk/calendar clerk; William Moschella, deputy counsel and parliamentarian; Will Dwyer, director of communications; Ashley Williams, deputy director of communications; Dudley Hodgson, chief investigator; Barbara Comstock, chief investigative counsel; Dave Bossie, oversight coordinator; James C. Wilson, Robert Rohrbaugh, and Uttam Dhillon, senior investigative counsels; Kristi Remington and Bill Hanka, investigative counsels; Robert Dold and E. Edward Eynon, investigative attorneys; Robin Butler, office manager; Carolyn Pritts, Tom Bossert, and Barrett Davie, investigative staff assistants; Phil Schiliro, minority staff director; Phil Barnett, minority chief counsel; Kenneth Ballen, minority chief investigative counsel; Michael Raphael, David Sadkin, Michael Yang, and Michael Yeager, minority counsels; Harry Gossett and Rick Jauert, minority professional staff members; Ellen Rayner, minority chief clerk; and Jean Gosa and Andrew Su, minority staff assistants.

Mr. BURTON. The committee will come to order.

Good morning. Before I make any comments, I would like to ask my colleague, Mr. Waxman, if he is going into the wallpapering business. That is the biggest display I have seen. Perhaps in the future we could make them a little smaller, but we won't take too much issue with that. It is very colorful.

Mr. WAXMAN. Mr. Chairman, perhaps in the course of the hearing we could allow the people who have brought that exhibit to be able to present their side to us. I think it is appropriate, and I am going to make a point of that in my opening statement. We are hearing only one side of the story, and I think we ought to be able to hear all sides of the story since there is more than one involved.

Mr. BURTON. At the proper time we will entertain your comments and statements regarding that.

Good morning. A quorum being present, the Committee on Government Reform and Oversight will come to order. Before Mr. Waxman and I deliver our opening statements, we will dispose of some procedural issues first.

I ask unanimous consent that all Members' and witness' statements be included in the record. Without objection, so ordered.

I ask unanimous consent that all exhibits, articles, and extraneous or tabular material referred to during this hearing be included in the record. And without objection, so ordered.

I ask unanimous consent that the following depositions be included in the record: Michael Anderson, Loretta Avent, Michael Chapman, Tom Corcoran, Ada Deer, Franklin Ducheneaux, Tom Hartman, Robin Jaeger, Hilda Manuel, Kevin Meisner, Patrick O'Donnell, Mike Schmidt, Tom Schneider, Heather Sibbison, George Skibine, and Jennifer O'Connor. And without objection, so ordered.

[NOTE.—The depositions of Michael Anderson, Loretta Avent, Michael Chapman, Tom Corcoran, Ada Deer, Franklin Ducheneaux, Tom Hartman, and Robin Jaeger may be found in Volume 2 of this hearing. The depositions of Hilda Manuel, Kevin Meisner, Patrick O'Donnell, Mike Schmidt, Tom Schneider, Heather Sibbison, George Skibine, and Jennifer O'Connor may be found in Volume 3 of this hearing.]

Mr. BURTON. I ask unanimous consent that Leon Panetta's responses to interrogatories be included in the record. Without objection, so ordered.

[The information referred to follows:]

LEON PANETTA'S RESPONSE TO GOVERNMENT REFORM AND OVERSIGHT COMMITTEE'S INTERROGATORIES REGARDING THE ST. CROIX MEADOWS GREYHOUND RACING PARK

Interrogatory No. 1

Please describe your knowledge of any aspect of an application filed with the Department of the Interior by three Wisconsin Indian tribes to take land into trust for the purpose of establishing a casino at the St. Croix Meadows Greyhound Racing Park, located in Hudson, Wisconsin. This request excludes all information or knowledge acquired through newspaper or media accounts.

Response:

I have no knowledge of or involvement with the application filed with the Department of the Interior ("DOI") by three Wisconsin Indian tribes to take land into trust for the purpose of establishing a casino at the St. Croix Meadows Greyhound Racing Park ("Hudson casino matter"), the related lobbying efforts or any subsequent investigation of the Hudson casino matter.

At this time, I do not recall a civil suit regarding the Hudson casino matter. Although I have no independent recollection of such a suit, I understand that White House documents produced to the Committee reflect that I became aware of a civil suit that was filed by the applicant Native American tribes in the Western District of Wisconsin. Sometime in September, 1996, more than a year after the DOI denied the application, the President became aware of a dispute between DOI and the applicant Native American tribes. The President asked me to provide him with a status report on the dispute. I asked the Counsel's Office to do a report. The Counsel's Office prepared a report regarding the civil suit and sent it to my office, and I forwarded it to the President. I do not have any additional knowledge of the civil suit and had no involvement with it.

Interrogatory No. 2

Please describe your knowledge and involvement with the lobbying effort, the civil suit, or the investigation of the above reference matter. This request excludes all information or knowledge acquired through newspaper or media accounts.

Response:

See response to Interrogatory No. 1.

Interrogatory No. 3

Please describe any discussions, contacts, or communications relating to the above referenced matter. Please explain with whom you had any such discussions, contact, or communications

(including the date or approximate date of any such discussion, contract or communication), and the substance of any such discussion, contact, or communication. Also, please list the names of any other person who may have knowledge of any such discussion, contact, or communication.

Response:

See response to Interrogatory No. 1.

Mr. BURTON. I ask unanimous consent that questioning in the matter under consideration proceed under clause 2(j)(2) of House rule XI and committee rule 14 in which the chairman and ranking minority member allocate time to committee counsel as they deem appropriate for extended questioning, not to exceed 60 minutes, equally divided between the majority and minority. Without objection, so ordered.

I would like to welcome everyone to our first hearings on campaign fund-raising abuses of the new year, and I would like to wish all of my colleagues who are here today a happy new year since we weren't here in the new year, and I hope everyone had a good break.

Today, we will begin 2 weeks of hearings into alleged political interference in a decision by the Interior Department to deny a permit for an Indian gambling facility in Wisconsin. Specifically, did the prospect of DNC contributions, Democratic National Committee contributions, sway the outcome of this application?

Up until this point, our hearings have focused primarily on illegal foreign money. At the conclusion of this set of hearings, I expect to return our focus to that subject. However, the allegations that have been raised are of such importance that I believe it is essential that we review them.

While we have begun a new year, I expect that this investigation will continue to face many of the same old obstacles. Twenty-four witnesses have either fled the country or refused to return for questioning. Forty-six witnesses have taken the fifth amendment. This is a total of 70 people, some of them very close friends and appointees of the President, who have refused to cooperate with this investigation. I think that fact is just astonishing.

At the same time, the White House and the Democratic National Committee continue to drag their feet on producing documents. We requested all of the relevant documents from the White House over a year ago. They were subpoenaed last March. Yet important White House documents continue to dribble in—some just arrived last weekend.

DNC Chairman Roy Romer recently told the press that he would no longer comply with congressional subpoenas. That is a fine example for a prominent public figure to set.

The President recently complained about all of the investigations pending against his administration. He said it was all partisan politics. But let's examine the record: President Clinton vowed in 1992, to have, quote, the most ethical administration, end quote, in history. But look at the facts: Six current or former Cabinet Secretaries have had their conduct examined under the Independent Counsel statute; four independent counsels have been appointed to investigate the Clinton administration, including the Whitewater Independent Counsel which is investigating business partners of the President and the First Lady; two former Clinton Cabinet Secretaries have been indicted by independent counsels; Independent Counsel Ken Starr has secured 14 convictions, including those of Associate Attorney General Webster Hubbell and then-sitting Governor of Arkansas, Jim Guy Tucker; Independent Counsel Smaltz, who testified before our committee a few weeks ago, has obtained 20 convictions relating to events during Secretary Espy's tenure at

the Agriculture Department, and has recently indicted former Secretary Espy himself; Independent Counsel Barrett has secured an indictment against former Housing and Urban Development Secretary Henry Cisneros. Others connected with the investigation have pled guilty; and the President and Vice President underwent a preliminary investigation under the Independent Counsel Act, and the task force investigation continues to include an examination of actions by senior White House and administration officials.

This is not a ringing endorsement of what President Clinton said would be the most ethical administration in U.S. history.

We recently learned in the realm of foreign money that New York District Attorney Robert Morgenthau forwarded information to the Justice Department about a large series of contributions to the DNC in the 1992 campaign from Venezuelan sources. Again, the Justice Department took a pass. However, Mr. Morgenthau has worked with us to unseal evidence of this foreign money being funneled into the DNC coffers in 1992, and we intend to further review this matter.

We have seen an amazing pattern of foreign money flowing into the Democratic campaign coffers from many sources: South America, Hong Kong, Thailand, Macau, Indonesia, and the Middle East. If these were a few isolated instances, one could believe that they happened without the knowledge of the Clinton administration or DNC campaign officials. But the accumulated weight of the evidence is overwhelming. It is hard to believe that so much money could have come into the DNC from so many countries without someone being aware of it.

Now, let me turn my attention to the topic of today's hearings. I am not going to recite the entire history of the events that are now the subject of a preliminary inquiry by the Justice Department. I think the basic facts are well-known. The Department of the Interior rejected an application for a casino submitted by three very poor Indian tribes in Wisconsin after a fierce lobbying campaign waged by several very wealthy tribes from Minnesota.

The wealthy tribes later turned around and contributed over $350,000 to the Democratic National Committee. Two of Secretary Babbitt's senior staff, his chief of staff and counsel, left the Interior Department and gained lucrative jobs representing the Shakopees, the wealthiest opponent of the application. Under the Ethics in Government Act, this would normally be illegal. However, there is an exception in the law that allows Federal employees to leave their Government jobs and immediately represent Native American tribes for their former agencies. Secretary Babbitt's former chief of staff, Mr. Collier, who was involved in the decisionmaking process and left the Department shortly thereafter, personally delivered either a $50,000 or $100,000 check to the DNC from his clients, the Shakopees, who benefited from the decision according to previous testimony.

One thing I would like to do today is respond to a few of the statements Secretary Babbitt has been making over the last couple of weeks. He has been on a media offensive. He has made a number of statements that don't hold water, and I want to respond to a few of them. He even has a web site now to put his own personal spin on this issue.

Secretary Babbitt has alleged that all of the investigations, including the investigation into his activities and the Interior Department, are only partisan. This has become a familiar line for the Clinton administration officials under investigation. But let me say this: I didn't make these allegations against Secretary Babbitt. This committee did not make these allegations. Senator Thompson didn't make these allegations against the Secretary. These allegations were made by his own lifelong friend, his law partner, his former campaign manager, Mr. Paul Eckstein.

Mr. Eckstein testified that Secretary Babbitt told him that he has been instructed by Harold Ickes to make the decision on the casino that day. Mr. Eckstein said Secretary Babbitt also asked him if he knew how much money these people had raised.

Secretary Babbitt initially reacted by denying that he ever had said any of these things to Mr. Eckstein. A year later when he changed his story, he said he did make the comments about Ickes but that he was lying to his old friend to get him out of the office. Which of these stories is true and which is false? When did he tell the truth and when did he lie?

After hearing Secretary Babbitt change his story so dramatically, is it conceivable that Congress would not launch a thorough investigation into this entire matter? Would we be responsible if we did not ask Secretary Babbitt to testify?

I want to respond to another statement that Secretary Babbitt made. He told the Star Tribune and a few other newspapers that we want the facts out; the more the facts are out, the faster the better.

That has not been our experience with the Interior Department. It has taken months and months to extract the relevant documents from them. I first requested all of the documents about this casino application from the Interior Department in August of last year. We did not receive the first documents until October, 2 months later. We didn't receive the bulk of the documents, six boxes, until January, after we had begun taking depositions. This is not cooperation. This is inexcusable. We are still receiving documents bit by bit. We have received two more files of documents over the weekend, this past weekend, 5 months after we requested them.

These are not the actions of a group of people who want to get the facts out. If Secretary Babbitt is going to tell the press that he wants to get all the facts out as fast as possible, he should check his record first. And Secretary Babbitt might consider having his staff spend less time on a spin web site and more time complying with this committee's subpoenas.

There is one more statement that the Secretary has been making that I want to comment on. Here is what he told the Minneapolis newspaper, quote: Basically you had 8 or 10 people, all of whom agreed that the application was going to be denied or did not disagree with the emerging solution—not a single one of them, end quote.

The documents seem to tell a different story. I have no doubt that when we hear from a number of Interior Department employees tomorrow, they will all say that they supported the July 14, 1995, decision. The documents, which came to us only after a subpoena had been issued, seem to tell a different story. The Interior

Department had always followed one set of rules and then changed in midstream. The Interior Department turned over several lengthy, detailed reports prepared by career Interior Department staff, all of which supported the application. As late as June 1995, 1 month before the application was rejected, the Indian Gaming Management Staff wrote a 22-page memo in support of the application. It stated that, quote, the proposed acquisition would not be detrimental to the surrounding community, end quote.

The Interior Department could not produce one single memo laying out substantive reasons for rejecting the application of the three tribes. Is it any wonder that this whole matter has wound up in court? The Interior Department is supposed to serve Indian tribes. Here the tribes were left in the dark.

What emerges from the entire record of documents and depositions is disturbing. The Interior Department had a standard set of procedures that they had used whenever they reviewed an application for off-reservation gambling. They were following these procedures when Patrick O'Connor, a lobbyist for the wealthy tribes and former DNC treasurer and DNC trustee, started contacting the President, Vice President Gore, the chairman of the DNC, Don Fowler, Clinton/Gore Finance Director Terry McAuliffe and Secretary Babbitt's staff and the landscape started to change. Patrick O'Connor personally spoke with the President at an April 24, 1996, fund-raiser in Minneapolis about this matter and the President immediately asked his senior aide, Bruce Lindsey, to respond to Mr. O'Connor. Mr. Lindsey called the White House from Air Force One that very day, and despite the warnings of White House Indian Affairs aide Loretta Avent that this was a hot potato, too hot to touch, Harold Ickes called O'Connor.

Conveniently, Mr. Ickes does not recall much of anything about the contacts in this matter. Much of what has been asked of Mr. Ickes he simply doesn't recall. Mr. O'Connor's partner and longtime friend of the President, Tom Schneider, held a fund-raiser which raised $420,000 on the night before the July 14, 1995, decision was made. Mr. Schneider does recall talking with Harold Ickes and asking him to followup on O'Connor's requests in May 1995. Mr. Schneider has previously testified that he and Ickes had a relationship such that, quote, if he said he was going to do something, he would do it, end quote.

So is it any surprise that the three applicant tribes were never given any chance to address any deficiencies in their proposal? This is required by law. Why weren't they allowed to fix any of the problems in their application? Five different reviews of this proposal by the career staff failed to find specific, quote, detriment to the surrounding community, end quote. This is a key test of the law.

The e-mails going back and forth among the staff in the summer of 1995, made it clear that under the Indian Gaming Regulatory Act, this application should not be rejected so they went hunting for another basis. Secretary Babbitt's people had made up their mind that this application was going to be rejected; they just had to come up with the right justification.

It was well-established Department of the Interior policy that opposition to gambling in the local community was not enough to re-

ject an application. However, that is exactly the grounds on which they rejected it. They flaunted their own policies.

It is not just me saying that. There is a lawsuit pending in Federal court in Wisconsin. The losing tribes have sued the Interior Department. This is what Judge Barbara Crabb said last March: "There is considerable evidence that suggests that improper political pressure may have influenced agency decisionmaking." This is a judge who was appointed by President Carter.

The Justice Department is defending the Interior Department in this lawsuit. We have received a copy of a memo written by one of the career U.S. attorneys working on the case. After reviewing the same record we have just reviewed, that lawyer raised serious concerns with how the Department followed their own procedures.

So you have a judge appointed by a Democratic President and a lawyer in the Clinton Justice Department acknowledging that the Interior Department's actions are suspect due to possible political interference.

It is clear that there was local opposition to this casino, as there often is in these cases. You will hear my friends on the other side of the aisle say that the local Congressman, a Republican, Steve Gunderson, opposed the casino, and this is true. Sincere, committed local citizens opposed the casino, and some of them are here. An equal number of sincere, committed local citizens supported it. In a 1992 referendum in Hudson, the casino was approved by a vote of 51½ percent to 48½ percent. But that is not what is at issue. The Department's own guidelines state that local opposition by itself is not sufficient to justify rejecting a casino, as was expressed in other new Department records that we have received.

I am not an advocate of expanded gambling. I have frequently opposed legalized gambling. However, these hearings are not about gambling.

Tomorrow, we are going to allow one of the local opponents of the casino to testify. Probably tomorrow evening, or I think—tomorrow afternoon. However, in all honesty, this is not about whether or not there should be a casino in Hudson, WI; it is about whether Federal agencies are going to allow their decisions to be based on political influence and contributions. That is the bottom line.

I want to address one final issue before I yield to my friend, Mr. Waxman, for his opening statement. Yesterday Mr. Waxman and I received a briefing from the Justice Department on the Freeh memo to the Attorney General, which we heard about in our previous hearing. As you will recall from our final hearings of 1997, Director Freeh wrote a 22-page memo to Attorney General Reno urging her to seek an independent counsel. We have agreed not to discuss the contents of this memo, but I think that I can fairly say after having received the briefing that I believe Director Freeh was right in making his recommendation. The memo supports what we learned in last month's hearings when Director Freeh testified about his recommendation.

The Independent Counsel statute requires specific information from a credible source that high-ranking Government officials may have violated the law. When that exists or when the Attorney General has a personal, financial, or political conflict of interest, the law calls for her to apply for an independent counsel. The briefing

given to Congressman Waxman and myself yesterday confirmed that, in fact, Director Freeh's recommendation relied on these two reasons.

I now yield to my colleague for his opening statements.

Mr. WAXMAN. Thank you very much, Mr. Chairman.

As we begin a new year of hearings, it is an appropriate time to reflect on where this committee has been, where we are, and where we are going. For 2 years, our committee has focused nearly all of its attention investigating the real and imagined scandals relating to President Clinton. In 1996, the committee held a series of hearings relating to the White House Travel Office and the FBI file fiasco.

Although those hearings uncovered no illegal activity, they launched a barrage of unsubstantiated accusations; the most colorful, that the White House kept an enemies list, that it used the IRS to punish political enemies, and that the White House was a haven for hard drug users.

These were all widely reported. All were completely false. And the accusers never backed up their accusations with proof. But because of the way these things seem to work, that was never reported.

Our committee has been the leader in creating a new species of congressional oversight. The basis for an accusation is no longer limited to whether something actually happened; the new standard is that it could have happened. Then the burden shifts to the accused to disprove it.

Last year yielded a bumper crop of sensational theories and banner headlines. The White House was accused of altering its videotapes by our chairman and selling burial plots at Arlington National Cemetery for campaign contributions. Former Energy Secretary Hazel O'Leary was accused of demanding charitable contributions from Johnny Chung. Maggie Williams was accused of soliciting campaign contributions in the White House. All are completely untrue, but, again, it was a smear not the truth, that captured the headlines.

Campaign finance violations should be investigated by Congress, and it is indisputable that both Republicans and Democrats abused the system in 1996. I think Senator Thompson's investigation clearly demonstrated that and the value of uncovering wrongdoing. But our committee has failed in every way to pursue a credible investigation. To date, Chairman Burton has issued 813 subpoenas and information requests. Only 10 have been sent to Republican targets. We have received over 1 million pages of documents; 98 percent of that total comes from Democratic sources.

The roots for this type of congressional oversight date back to the strategy devised by a fellow named Joe Gaylord, Speaker Gingrich's top advisor. He urged congressional Republicans to try to, quote, "Indict the Clinton administration and get the Clinton administration under special prosecutor problems."

This message was reinforced in the infamous Ginni Thomas memo. The 1996 directive instructed all Republican committee chairmen to focus their attention on any ethical lapses in the Clinton administration so that the Republican leadership could determine an agenda.

Which brings us to today. The first question is, why a hearing today, during a recess and days before the President's State of the Union address? The explanation is hard to miss. On December 18, 1997, a front page story in Roll Call, a newspaper here on Capitol Hill, was entitled, "Burton Slates Pre-State of the Union Hearings to Tweak Clinton."

This newspaper, under that headline, reported the following:

House Government Reform and Oversight Chairman Dan Burton's campaign finance hearings will resume on January 20, 1998—just in time to embarrass President Clinton on the eve of his State of the Union address.

Now, as the chairman is fond of saying, that isn't me saying that.

Two Republican committee sources said the timing of the next round of hearings . . . was meant to turn up the heat on the President before his January 27th speech.

"Obviously this is a political strategy," said one GOP committee aide. "We won't let Clinton stand up and say all is sunny when he has done everything he can to block this investigation."

In other words, this hearing isn't a search for truth, it is part of a deliberate strategy to score partisan points.

Now, along those lines, the chairman attacked Secretary Babbitt for talking to the press and even having a web site. Well, the chairman has been speaking to the press for over a year, and he has a web site. The chairman attacked Mr. Ickes, but he didn't even bother to invite Mr. Ickes to come and testify or to give a deposition or to tell his side of the story. Evidently it is easy to attack people when they are not around. You would like your target to be defenseless, so he objects when they put up a defense.

In an effort to make sure that the hearings had balance, I asked the chairman to invite eight witnesses. I included George Skibine and Mike Anderson, both from the Interior Department, because it seemed obvious that they were, indeed in any hearing on this matter—they were instrumental in the Hudson Casino decision and are essential to understanding what happened. And I applaud the chairman for including them. Unfortunately, the chairman did not grant my request to include Hilda Manuel, who is the Bureau of Indian Affairs Deputy Commissioner and the most senior career employee involved in this issue.

I also requested Wisconsin's Governor Tommy Thompson, former Representative Steve Gunderson, State representative Sheila Harsdorf and County Board Supervisor Nancy Bieraugel. They are all Republicans and locally elected officials who oppose the casino and would be invaluable in providing a complete picture to our committee on this matter.

Although Chairman Burton initially refused my request, yesterday he belatedly invited Supervisor Bieraugel to testify, but he insisted that she appear at the end of tomorrow's hearing. That makes no sense. She is here today. She should testify with the witnesses today to give some balance, and the other four Government officials should also appear.

The chairman opened this hearing by commenting on an exhibit on the wall. I didn't bring that exhibit. Citizens from Hudson, WI, brought that exhibit, and they are here today because they want to tell their side of the story. But they haven't been permitted to testify, and their one representative is being put on at the end of

tomorrow when maybe the press won't be paying so much attention, and it further inconveniences her because she has to be back home by tomorrow night.

Well, the chairman and his staff seem to have their own rule of political correctness. Today they want to tell a story. Their story is that three Indian tribes, today's first panel, were victims in the casino decision and were abused by the White House and Democratic party politics. Because this is a story and not fact, any information that contradicts this theory isn't permitted, so we can't hear from Governor Thompson who could explain why he opposed the casino, or former Representative Gunderson who led the congressional fight against the casino, because what they have to say doesn't fit in with the story.

If Congressman Gunderson testified, it would be immediately apparent that his views were thoughtful, reasonable, and compelling. Because he represented Hudson in Congress, he has a deep knowledge of this controversy. His motives are unquestioned, and he reached exactly the same conclusion as the Interior Department. If he testified, it would be nearly impossible for the chairman to impugn the administration.

The chairman subjects potential witnesses to a very clear litmus test: If your information helps the theory of the day, you are in. If it hurts, you are out.

If Representative Gunderson or the others testified, we would learn that the story of the Hudson Casino does not begin with our first witnesses, and this isn't a case of impoverished, naive Indian tribes versus wealthy, politically sophisticated Indian tribes. If they testified, we would learn that this is all a fiction and that this fiction can only be sustained by ignoring the record.

We would learn that the real beginning of the story isn't with the tribes, but with a man by the name of Fred Havenick and an organization called Southwest Florida Enterprises. Fred Havenick and Southwest Florida Enterprises are the engine behind the story. It was Mr. Havenick's company that surmounted local opposition and successfully pushed through new zoning rules so that his dog track could be located in Hudson, WI. And when that dog track lost money, as everyone seemed to know it would, it was Mr. Havenick who conceived of the idea of a Las Vegas style casino right there on the premises, but because that wasn't permitted under Wisconsin law, he had to find a loophole, so he began shopping around for an Indian tribe. The tribe was essential because if it acted as a front, he could exploit a Federal exception that permits Indian gaming. That loophole would allow Southwest Florida Enterprises to circumvent the local opposition and the State law prohibiting casinos. So much for the Republican idea that local people ought to make these decisions.

We would have heard that view articulated by some very prominent Republicans like the Governor of the State and the former Representative of the area, Congressman Gunderson.

Now when local opposition intensified and Mr. Havenick found this first tribe to front for him, that tribe backed out, so he went shopping again, and on this trip he found three tribes that comprise our first panel.

When all the facts are in, I believe we will see that the decision in this matter was made by career Department of the Interior officials on the merits and without political interference.

In other hearings I have been critical of the easy access Johnny Chung enjoyed and for the White House's long delay in getting us the fund-raising videotapes. I will be critical when it's appropriate, even of this White House and this President. But the record in this case doesn't justify criticizing the White House or the Interior Department. We have taken the depositions of numerous Interior employees, including the career employees most involved in the decision, and none indicated any political interference or improper conduct.

I sympathize with the casino tribes and their economic plight. They and Mr. Havenick have raised a legitimate question as to whether every procedural step was executed properly, and, in fact, they are suing the Interior Department on exactly this basis. And I don't claim to be an expert in this area, but my reading of the record indicates that there could be some deficiencies. Whether those are major problems or insignificant technicalities is for the courts, not the Congress, to decide.

But that is an entirely different issue, however, than political corruption, which is the focus of this hearing. And I have seen nothing in the record that provides any support for believing that campaign contributions determined the Hudson casino decision.

The tale of the Hudson casino is rich with two of Washington's most enduring traditions. We have lobbyists taking credit for the morning sun, and a decisionmaker who doesn't want to be blamed when he says no to a friend. But the entire Capitol would have to shut down if that starts qualifying as criminal behavior.

Mr. Chairman, at the conclusion of my statement, I am going to make two motions. The first is a motion to call Governor Thompson, Congressman Gunderson, State Representative Harsdorf and Hilda Manuel as witnesses. These hearings have little credibility if they are not included.

Second, for over 6 months, I have requested that you investigate the $50 billion tax breaks Speaker Gingrich and Senate Majority Leader Lott sponsored for the tobacco industry in last year's budget bill. As you know from my letters, Haley Barbour, the former chairman of the Republican National Committee, lobbied this issue for the industry, and the cigarette companies were the No. 1 contributors to the Republican party.

When you rejected this request in the past, your rationale was that no foreign money was involved in that scandal, and you were focusing our hearings on foreign money. But the fact is, Mr. Chairman, there is no foreign money involved in the Hudson casino issue. Your rationale for this hearing is that corruption, the selling of public policy for campaign contributions, took place.

I believe that that same rationale should lead us to get the facts about the tobacco industry, its contributions to the Republicans, and the subsequent action to sneak in a $50 billion tax break for the tobacco industry by two Republican leaders in a budget bill when no one ever knew what they were doing.

The $50 billion giveaway to the tobacco industry is indistinguishable from today's hearing. In fact, the only difference in the matter

is the industry's contributions and the benefit they received dwarf today's subject. Accordingly I will have a motion to subpoena information from the Republican National Committee, RJR Tobacco, the Philip Morris Co., Haley Barbour, Speaker Gingrich and Majority Leader Lott regarding that matter.

Mr. Chairman, you closed your comments by reporting about a confidential briefing that both of us received regarding the memo that FBI Director Freeh had submitted to the Attorney General. I was at that briefing yesterday, and that briefing was about a memo that involves Mr. Freeh's interpretation of the law. His interpretation of the law was different than other people in the Justice Department's interpretation, and his interpretation was not the one accepted by the Attorney General, Janet Reno.

What we have is a difference of opinion on the law. I heard nothing other than the fact that the FBI Director thought that, based on his reading of the law, there should have been an independent investigator. That was his reading, and as the Attorney General testified and has said to the press on several occasions, she listened to his views, but it was her decision, and she made her decision on what she thought the law specified.

Mr. Chairman, I have before us a motion that I have indicated to you, and I would like to move at this time that the committee subpoena or at least invite Governor Thompson, former Representative Gunderson, State Representative Harsdorf and Hilda Manuel as witnesses so that we can have a complete picture in the 4 days in which you are going to hold hearings on this issue from those who have something to say that I think is very important.

And I offer a second motion that we subpoena information from the Republican National Committee, RJR Tobacco, the Philip Morris Co., Haley Barbour, Speaker Gingrich and Majority Leader Lott with respect to the $50 billion giveaway to the tobacco industry that they all promoted, and I ask for consideration of these motions.

Mr. BURTON. I have been informed by our counsel, Mr. Waxman, that the only subpoenas or requests that can be made are those that are relevant to the hearings that are currently under way. So the latter motion would be out of order.

Mr. WAXMAN. Mr. Chairman, on that point, I accept your ruling on it. I do want to, however, publicly call upon you to issue those subpoenas and to follow that inquiry, which I think is as important as anything this committee has pursued.

Mr. BURTON. The Chair will take that under advisement.

Now, Mr. Waxman, you have the right under clause 2(k)(6) of House rule XI to propose subpoenas of additional witnesses. Under House rules the committee must dispose of those requests. The committee will receive the requests completing the names of the proposed witnesses and the dates for their appearance. I will, before this hearing—which spans 4 days—schedule a vote for those requests consistent with the rules. I don't think we will do that right now. We will do it later on.

Mr. WAXMAN. Mr. Chairman, I want to point out that I think it is important that we have these witnesses, and I also want to point out with regard to the tobacco issue, I am going to press that issue every time we hold a hearing until we get that issue brought before

us. It is an important one. It is relevant to campaign finance abuses, and I don't think that it ought to be swept under the rug if this committee's investigation is to have any credibility as being a fair inquiry into campaign finance matters.

Mr. LANTOS. Parliamentary inquiry.

Mr. BURTON. The gentleman will state it.

Mr. LANTOS. Mr. Chairman, I want to be sure I understand your ruling. Mr. Waxman moved to invite Governor Thompson, former colleague Congressman Steve Gunderson, and two other individuals. You indicated that you will put this motion to the committee before the conclusion of the 4 days of hearings that are scheduled on this matter.

Now, it is self-evident that unless you do so at this stage, it is very unlikely that these four individuals could testify before the committee, assuming that the motion passes. So I would like to inquire at what point you intend to put the motion to the committee?

Mr. BURTON. Mr. Lantos, the Chair retains the right of recognition under the rules. The request made by Mr. Waxman is not privileged. Issues regarding recognition are not applicable. That has been the rule of the House since 1881. We will, as I said, vote on this issue at the proper time, and in the opinion of the Chair, this is not the time to do that.

Mr. LANTOS. Mr. Chairman.

Mr. BURTON. The gentleman has a point of order he would like to make?

Mr. LANTOS. I do have a parliamentary inquiry.

Mr. BURTON. The gentleman will state it.

Mr. LANTOS. The ranking member of this committee put a motion proposing to invite four public officials, including the Republican Governor of the State in question, and the former Republican colleague in whose district this gambling casino is, to testify. You have indicated that you will not now put the motion to the committee.

My question, respectfully, is at what point do you intend to do so? This is a democratic body. I am asking a proper question in a proper fashion. And I think it is your responsibility as the chairman of this committee to give a respectful and meaningful answer.

Mr. BURTON. I thought I did. And the answer is that we will vote on this motion, but we will not vote on this motion at the present time.

Mr. LANTOS. But, continuing my parliamentary inquiry, Mr. Chairman, as I understand it, you have scheduled hearings on this matter today and tomorrow and next week on Wednesday and Thursday. May I inquire on which of those 4 days you intend to have this motion voted on?

Mr. BURTON. I am not going to give a definite time right now. All I will tell you is that we will vote on this motion after all members of the committee have been informed. We don't have all the Members here right now. I want to make sure that everybody is apprised of the motions and the ramifications of these motions. And so the Chair reserves its right to have the vote at a proper time, and this is not the proper time.

Mr. BARRETT. Mr. Chairman, I have a parliamentary inquiry. Parliamentary inquiry, Mr. Chairman?

Mr. WAXMAN. Mr. Chairman, may I be recognized on this point?

Mr. BURTON. Well, does the gentleman have a parliamentary inquiry?

Mr. WAXMAN. I would like to see if we can resolve this issue amicably, and I would like to be recognized in that attempt.

Mr. BURTON. The gentleman will state his position.

Mr. WAXMAN. It would be a joke if we waited to the fourth day of our hearings before you brought this motion up, because then it is going to be too late to ever include them in the hearing. If you are trying to make sure that the Members have a chance to understand the matter, and you get more Republican Members so you can outvote us, I respect that.

Now, you at least ought to put this to a vote today, and if you will agree to do that, then I will understand and not push the matter to be considered at this moment, respecting the chairman's desire. Can we have that understanding?

Mr. COX. Mr. Chairman. Mr. Chairman.

Mr. BURTON. Does the gentleman have an inquiry he would like to make?

Mr. COX. Yes. I understand that the courtesy was extended to the ranking member to address briefly the wisdom of conducting a vote at the present time, and I wish just to make a brief point in the same vein.

Mr. BURTON. The gentleman will state his point.

Mr. COX. There are a group of people, I take it, from Wisconsin who have joined us today who oppose the dog track and the gambling operations in Wisconsin. I checked with friends and relatives of my own who live in the area, and they opposed the track as well. I take it that if I were making the decision with a view to vindicating the interests of the community that I represented, I might have gone the same way. I might have said no dog track. But if we turn this hearing into a relitigation of the wisdom of a dog track in Hudson, WI, I think, frankly, we are getting very far afield from the purpose of our committee as well as the specific purpose of this investigation, and, therefore, I think today we should not take advantage of the presence of our witnesses on the first panel who represent one of the competing interests in that decision because we are not here to ask them about the wisdom of putting a dog track in Hudson, WI.

If we have the other side come up and tell us that there should not be a dog track in Hudson, WI, then we have reduced this committee to the level of the career bureaucrats in Interior who are supposed to have made this decision in the first place. The only purpose for conducting this hearing, as I understand it, is to determine whether or not the third of a million dollars in money that flowed from one of the interests in this was on the level; whether or not the Secretary of the Interior lied to the Senate of the United States; whether or not the President of the United States, Bruce Lindsey, Harold Ickes and the chairman of the Democratic National Committee were somehow involved in a dog track.

When I worked in the White House in the counsel's office, I can tell you we didn't do dog tracks, so there is a way for us to investigate this that doesn't get us into the merits, and I think we make a serious mistake in the conduct of this inquiry if we bring on wit-

nesses who are going to testify to the merits of the decision whether to have a dog track in Hudson, WI.

Mr. WAXMAN. Will the gentleman yield to me?

Mr. BARRETT. Parliamentary inquiry, Mr. Chairman.

Mr. BURTON. Just 1 second. We will vote, Mr. Waxman, we will vote today or tomorrow on your motion regarding the subpoenas so that if your motion prevails, there will be time enough for those additional witnesses to testify. So we will do that in a timely fashion.

Regarding the people from Hudson who are here, I was advised by my counsel that we didn't know they were coming and that he met with them for over an hour, and discussed this issue with them.

Because we already had our panel set, we didn't want to muddy the waters, so to speak, by bringing these additional panelists before us. However, let me just say this: I said that we would bring—I believe the lady's name is Nancy Bieraugel. We would allow her to testify at the conclusion of the hearings tomorrow. But in order to accommodate the people from Hudson, we will allow her to testify at the conclusion of the hearings today so you can catch your plane if you need to go back. Now, I think that is being about as fair as we can be, because we didn't know they were coming.

I understand their opposition, but I want to state once more that this series of hearings is not about whether or not gambling should be allowed, whether or not there should be a casino in Hudson, whether or not there should be a dog track in Hudson. I personally opposed legalized gambling when I was a State legislator in Indiana, and I still have that same feeling. These hearings are not about that. They are about whether or not political influence or campaign contributions altered the decisionmaking process. That is what it is about. But in deference to the folks from Hudson who have come here this long way, we will allow them to have Ms. Bieraugel testify later on this afternoon.

Mr. WAXMAN. Mr. Chairman, if you would yield to me just on your time?

Mr. BURTON. I will yield to you.

Mr. WAXMAN. I want to express my appreciation to you. I think this is a fair resolution of the matter. I do want to point out that we wrote to you over a week ago asking that these people be invited to give their point of view. The witnesses we have today have no knowledge about what went on in Department of the Interior. They have strong feelings that they should have had the decision go their way. Now we will hear from people who have strong feelings that it should have gone the other way.

You can't divorce the decision by Interior with the merits, both pro and con, because they had to make a decision on this very issue. That is what goes on all the time. So I disagree with Mr. Cox, and I agree with the chairman that we ought to have both sides presented to us on the question of whether there should have been a casino right there in Hudson, WI, and whether the local people's wishes should have been ignored.

So I thank you for that resolution. I think it is a fair one. I look forward to having the vote. I hope we can get it today, but if you want to put it off until tomorrow, as long as we have a chance in the course of our hearings to have these other witnesses included.

I would hope the Members would support our motion at the time the vote is put to them, so that we can get even a more complete hearing on the matter. Thank you.

Mr. BURTON. Our first panel today is individuals from the affected tribes. We have Chairman Gaiashkibos, with us; Chairman Arlyn Ackley, Sr.; and George Newago. Would you gentlemen please rise and raise your right hands?

[Witnesses sworn.]

Mr. BURTON. On behalf of the committee, we want to welcome you here today. You are recognized to make opening statements. If you have longer statements than 5 minutes, would you please submit those for the record.

We will start with you, Chairman Gaiashkibos.

STATEMENTS OF GAIASHKIBOS, CHAIRMAN, LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS; ARLYN ACKLEY, SR., CHAIRMAN, MOLE LAKE-SOKAOGON BAND OF LAKE SUPERIOR CHIPPEWA INDIANS; AND GEORGE NEWAGO, CHAIRMAN, RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

Chairman GAIASHKIBOS. Chairman Burton, Congressman Waxman, distinguished congressional committee members, ladies and gentlemen, my name is Gaiashkibos. I am chair of the Lac Courte Oreilles Band of the Lake Superior Chippewa Indians. Lac Courte Oreilles is located in rural northern Wisconsin. We have a membership of 5,250 enrolled tribal members. Over half live off the reservation, largely because of lack of employment opportunities. Following the treaties of 1837, 1842, and 1854, we were left with a reservation land base of 79,000 acres. Now most of that is lost, with land ownership within our reservation being checkerboarded.

I have been privileged to serve my tribe as chairman of our tribal governing board during 8 terms of office preceding my current term.

I served two terms of office during the years of 1991 and 1995 as the elected president of the National Congress of American Indians, the Nation's largest intertribal organization. NCAI counts as its members most of the Native American nations within the United States and Alaska. In that capacity I played an ongoing role in the development of national tribal gaming policy, and became quite familiar with the applicable policies and procedures.

I want to see this work for all tribes. Improvement of economic conditions with tools for self-development is the principle behind the Indian Gaming Regulatory Act, or IGRA. I want to see the benefits of IGRA principles achievable by our tribe and the two small tribes, also of the Chippewa or Ojibwa Nation, we have allied ourselves with as to the development of the proposed Hudson project. I have learned, however, that politics is not only the development of sound policies, but diligence in seeing that they are not abused.

Four Feathers was formed in 1993 in order to acquire a dog track facility near Hudson, WI, and convert the facility to tribal economic development featuring a casino. Three of the Four Feathers partners are Indian tribes, Mole Lake-Sokaogon, Lac Courte Oreilles, and Red Cliff Bands of the Lake Superior Chippewa Indians of Wisconsin. The fourth partner is the current owner of the dog

track, Croixland Properties, which would transfer the facility, along with surrounding real property, to the tribes and further provide initial capital financing to the partnership.

Lac Courte Oreilles was the first of 11 Wisconsin tribes to sign a Class III Gaming Compact with the State of Wisconsin under the Indian Gaming and Regulatory Act of 1988. Immediately after signing and resulting approval of the Gaming Compact between Lac Courte Oreilles and the State of Wisconsin in 1991, we conformed our modest casino within our small community to Compact terms, and commenced the search for a suitable second location site to conduct a Class III gaming casino outside of the exterior boundaries of the reservation. Lac Courte Oreilles was diligent to include language in the Compact that addressed the need for an additional site to meet the financial needs of the tribe.

Page 3 of the Gaming Compact with the State of Wisconsin, section 3, defines "tribal lands" as "All lands within the State of Wisconsin which may be acquired in trust by the United States for the benefit of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians after October 17, 1988, over which the Tribe exercises governmental power, and which meet the requirements of section 20, of the Act, 25 United States Code section 2719."

Lac Courte Oreilles is located in rural northern Wisconsin. The entire region is economically depressed. Duluth/Superior is located approximately 100 miles northwest of Lac Courte Oreilles. St. Paul is approximately 150 miles southwest of Lac Courte Oreilles. The major industry in Sawyer County and the areas surrounding Lac Courte Oreilles are logging and tourism.

Lac Courte Oreilles is not adjacent to any large metropolitan area. Much of the available work is seasonal. Lac Courte Oreilles' unemployment rate fluctuates from 45 percent in the summer months to over 65 percent in the winter months. Employment for our tribal members and economic development for Lac Courte Oreilles is a high priority for our tribe. With the decrease in Federal and State grant dollars, the tribe must become more self-sufficient in order to meet the needs of its members.

There are approximately 2,025 tribal members that have relocated, primarily to seek employment and develop a better standard of living, and now reside elsewhere. This migration appears to have accelerated in light of the strict welfare rules and reforms that are in place in Wisconsin. Lac Courte Oreilles, due to decades of Federal cutbacks, has had to do more with less to develop a growing tribal economy.

Currently Lac Courte Oreilles has a real shortage of safe, decent housing. Homelessness, with three or more single adults living together in order to make ends meet, is common practice in our reservation communities. There is no housing for single adults. The waiting list for tribal members desiring 1 to 3 bedroom homes is well over 100 families. It is estimated a cost over $5 million is needed to provide decent housing for our members.

Education is a top priority for our tribe. Children of the Lac Courte Oreilles attend either the Hayward public school system or the Lac Courte Oreilles Ojibwa K through 12 school system. Over 450 students or 23 percent of Lac Courte Oreilles youth attend the public schools. The LOC school has a student population of 306 stu-

dents. In 1995, the BIA condemned the portable elementary classrooms necessitated because of outdated facilities. Yet it did not provide adequate funds to construct a new elementary K–6 facility; $2 million was provided and construction was started in 1997. However the building sits vacant with no funds to complete the project.

Mr. BURTON. We want to stick as close to the 5 minute rule as possible. We will try to give you some additional time from our side when we get into the questions and answers, so we will get back to you to finish your statement in just a moment.

Chairman GAIASHKIBOS. Thank you, Mr. Chairman.

[The prepared statement of Chairman Gaiashkibos follows:]

Pride Of the Ojibwa
Route 2 • Box 2700
Hayward, Wisconsin 54843
(715) 634-8934 • FAX (715) 634-4797

Testimony of gaiashkibos
Chairman of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, to
the House of Representatives
Committee on Government Reform and Oversight
Regarding the Department of the Interior's
Denial of a Fee-to-Trust Application in Hudson, Wisconsin
Rayburn House Office Building, Room 2154
Washington, DC
WEDNESDAY, JANUARY 21, 1998

Chairman Burton, distinguished Congressional Committee Members, Ladies and Gentlemen, my name is gaiashkibos. I am Chairman of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians. Lac Courte Oreilles, or LCO, is located in rural Northern Wisconsin. We have a membership of 5,250 enrolled tribal members, over half living off the reservation largely because of lack of employment and opportunity. Following the treaties of 1837, 1842 and 1854 we were left with a reservation land base of 79,000 acres, now most of that is lost with land ownership within our reservation being checkerboarded.

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however that politics is not only the development of sound policies, but diligence in seeing that they are not abused.

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Lac Courte Oreilles, due to a decade of federal cut backs, has had to do more, with less, to develop a growing tribal economy. Currently Lac Courte Oreilles has a real shortage of safe, decent housing. Homelessness, with three (3) or more single adults living together in order to make ends meet, is common practice in our Reservation communities. There is no housing for single adults. The waiting list for tribal members desiring a 1-3 bedroom home is well over 100 families, it is estimated that cost of over five million dollars ($5,000,000) is needed to provide decent housing for our members.

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We find it extremely sad that on graduation day at our LCO School System, parents with high hopes and high expectations acknowledge the fact that there is very little opportunity for meaningful employment within the Reservation for our young people.

Lac Courte Oreilles operates a fully accredited health system. Again, due to federal Indian Health Service ("IHS") funding formulas, Lac Courte Oreilles is only funded at a 60% level, leaving an unmet need of 40%. As a result, our clinic implements a priority formula for life and death services. Nearly all elective surgeries are considered to be non-priority. Additionally, catastrophic health costs have cost the LCO Clinic hundred of thousands of dollars that were not covered by other funds. Unmet health care costs total nearly five million dollars ($5,000,000).

In 1996, Lac Courte Oreilles, through its first-ever bonding initiative, borrowed nine and one half (9.5) million dollars ($9,500,000). The funds were used for tribal debt consolidation, casino/hotel amortization, and infrastructure. Three and a half (3.5) million dollars ($3,500,000) was earmarked for a centralized water and sewer system. Conservation estimates by engineers indicate that an additional six and a half (6.5) million dollars ($6,500,000) is needed to complete the project. This is to be utilized by the larger consolidated communities that are in proximity to tribal enterprises and office complexes.

Our Elders are in great need of additional services. Presently, the Tribe operates two (2) Elderly Centers which are grossly under funded. There are no recreational activities or outside community events sponsored due to lack of funds. Two million, three hundred thousand dollars ($2,300,000) is needed to construct an independent living complex, staffed with 24-hour nursing supervision.

Employment, tribal self-determination, and the opportunity to generate revenue to promote the health, welfare, education, safety, and economic development for a stronger vital Tribal Government motivated the TRIBE to seek to develop a second casino site with more economic potential than offered by the then existing site.

The first off reservation site Lac Courte Oreilles looked at was the failing, bankrupted Mount Telemark Ski Resort located approximately 30 miles North of the Reservation in Bayfield County. Due to the parties' inability to reach an agreement, hesitancy by the State of Wisconsin, and inter-tribal discord, this first attempt to purchase on off-Reservation site failed before substantial amount of resources were put into the project.

In October 1993, the Four Feathers Tribes began the process of applying for approval of the Hudson site as an off-Reservation gaming facility. The approval procedure consists of two principal steps. First, the Secretary of the Interior must determine that gaming on a particular site is appropriate under 25 U.S.C. §2719, which prohibits off-Reservation gaming unless:

> the Secretary, after consultation with the (applying) Indian Tribe and appropriate State, and local officials, including officials of nearby Indian tribes, determines that a gaming establishment on newly acquired lands ***would be in the best interest of the Indian Tribe*** and its members, and ***would not be detrimental to the surrounding community***, but only of the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination (emphasis added).

Second, the Secretary must exercise his discretion to acquire the off-Reservation land in trust for the applying Tribe under 25 U.S.C. §465:

> The Secretary of the Interior is hereby authorized, in his discretion, to acquire ... any interest in lands ,,, for the purpose of providing lands to Indians.

The steps in the application process can be summarized as follows. An application to take lands into trust must be submitted to the Area Office of the Bureau of Indian Affairs ("BIA"), an agency within the Department of the Interior ("DOI"). The Area Office must evaluate the application and make a recommendation to BIA's Indian Gaming Management Staff in Washington, DC ("IGMS") whether DOI should find that the acquisition is in the best interest of the applying Tribe and would not be detrimental to the surrounding community. IGMS then reviews the Area Office evaluation and makes a recommendation to the Secretary of the Interior. The Secretary then reviews the recommendation and makes the final decision. Until our experience, we understand that the Secretary had always followed the recommendation of the Area Office.

Lac Courte Oreilles and the other three (3) partners in the Four Feathers group devoted hundreds of hours in putting together the application that was submitted to the Bureau of Indian Affairs.

It must be emphasized that all the work on the Hudson project by ourselves, Red Cliff, and Sokaogon consumed the limited resources of our Tribal governments, meaning we depleted limited resources and did not significantly explore other approaches or alternatives. We directed our efforts toward the promises of IGRA and the provisions of our respective compacts.

Early on, the three (3) Chippewa Tribes, Red Cliff, Sokaogon, and Lac Courte Oreilles had to work out numerous details on how the Intertribal consortium would be developed with Croixland Properties. This, in itself, took countless meetings, phone calls, and travel to accomplish. This was accomplished in conjunction with all the many other obligations that Tribal Governments must deal with.

The Tribes were told that if only one Tribe (at the time, Lac Courte Oreilles was the only Tribe considering developing a casino in Hudson) looked at an off-Reservation site, necessary approvals would be less likely. The deal stood a much greater opportunity of success if two (2) or more Tribes formed a partnership and sought approval.

The application process to the Bureau of Indian Affairs was a long. drawn-out process. Our initial submission was to the BIA's Great Lakes Agency, who reviewed it and submitted additional comments, to which the Tribes responded. Once it cleared the BIA's Great Lakes Agency, it was forwarded to the BIA's Minneapolis Area Office. There, the application sat for over one (1) year. Additional information was requested and detailed responses were made. The BIA's Minneapolis Area Office provided written comments and requested additional information on clarification on numerous areas. Just when we thought we addressed all concerns and questions they had requested, and the time ran out on public comment, the entire process repeated itself.

In November 1994, the BIA Minneapolis Area Office determined that the standards of §2719 were met and recommended approval of the acquisition. The Minneapolis office forwarded its report to the BIA Indian Gaming Management staff.

Once the Area Director signed the application and recommended approval to the BIA Central Office, we were never notified that there were any problems with the proposal.

Normally the comment period on applications to take off-reservation lands into trust is closed prior to the time the BIA Area Office makes its recommendation to the Indian Gaming Management staff. That did not happen here.

On February 7, 1995, Patrick J. O'Connor, a lobbyist for several opposing Tribes who have experienced great success with their casino, spoke by phone with Thomas Collier, Secretary Babbitt's Chief of Staff, and requested that the Department reopen the comment period. The following day a meeting took place between George Skibine, the head of the Bureau's Indian Gaming Management staff and John Duffy, counselor to the Secretary, with representatives and lobbyists of the opposing Tribes. The comment period was reopened so that the opponents to the

project might submit an economic study and other evidence. We were not informed of the extension of time until approximately seven weeks later, and, despite our objections, never even received a meaningful opportunity to reply to the untimely submittals. The orderly deliberative process concerning receipt of lands in trust was turned on its head.

Following the mysterious rejection of our application by the Department of Interior, George Skibine, accepted an invitation to meet with leadership of our three tribes at LCO. I was not present and indeed was out of the office at the time. However, I have talked to people who were present. When asked what happened regarding the Application, Mr. Skibine stated without equivocation that he and his staff determined that the project was not detrimental to the surrounding community and was beneficial to the Tribes. Therefore, he stated it was approved at his level. The application was however, he advised, turned down "upstairs."

Recently a written analysis directed "upstairs" by George Skibine has surfaced. Therein the document under his name recommends that the application of our three (3) tribes be approved. This, of course, is consistent with what Mr. Skibine advised us. It is inconsistent with those who say that the decision to disapprove was made at staff level.

It is claimed that our project is not desired by the City of Hudson. Yes, there have been several vocal opponents on the City Council following the recommendation for approval by the BIA Area Office. While the project was being developed however, we consulted with the local community in shaping our plans and generally felt welcome. There was a public referendum in Hudson. The Pro-Casino Proposition passed. The local community voted for it. Thereafter, Four Feathers and the City Council of Hudson entered into a municipal services agreement whereby Hudson agreed to supply and we agreed to pay for various services. This is a signed contract. Furthermore, it is my understanding that applicable law requires consideration as to whether a project is detrimental to the local community to be made by the Bureau. It doesn't permit any official or group of officials to determine Indian gaming or land-management policies. If that were so, racism would be transformed to a trump card.

I am concerned that big bucks, strategic donations, political access, and expensive lobbyists are being engaged to disrupt the orderly processes developed to make gaming an economic development opportunity assessable to all Tribes pursuant to State Compact. I am not going to comment at length as to whom gave what to whom, and what decisions may have been influenced accordingly. Yes, testimony by the Secretary of Interior that he followed a schedule set by the White House political advisor, and credible testimony that he advised our representative that opposing Tribes had given a half-million dollars to democrats, is troubling, very troubling. Also, disturbing are memos to government officials by opposing lobbyists misidentifying the dog track owner and our partner as a different entity with ties to organized crime. Also troubling is a handwritten notation apparently by the recipient, on correspondence directed to the Chairman of the Democratic National Committee, stating "Minnesota Indians give to the DNC. WI doesn't." Also, disturbing is the fact that two of the top Interior officials that Agency documents identify as key players in making the final decision on behalf of the Secretary are now working for the

Washington law firm of the Minnesota Tribe that assumed the leadership in opposing our efforts. Your hearings will undoubted provide greater detail. For now, you understand our concerns.

It is my opinion that Four Feathers developed a well though-out project based upon documented studies and expert analysis. The one thing we did not anticipate was the political influence by special interest groups that poured large sums of money into political contributions, with the apparent intent of reversing preliminary decision making and influencing the outcome of our application.

The Nations Indian gaming policy should be based upon giving all Tribes opportunity, not facilitating a select few to corner regional markets.

It is important that this Committee examine what happened in Hudson, and what happened in Washington. Fairness for our Tribes is indeed interwoven with justice to American citizens generally. Maltreatment and broken promises to American Indians, has for centuries marred our national character. None of us wish to see this cycle repeated. We support the efforts of your Committee.

Chairman ACKLEY. Good morning, Mr. Chairman and members of the committee. My name is Arlyn Ackley. I am tribal chairman for the Sokaogon Chippewa tribe in Mole Lake, WI.

I was debating here this morning whether I should read my statement or not. In previous testimony in other committees and of the House Appropriations, I have submitted my comments to the committee and they accepted them for the record. I would like to do that also here this morning, if I may, Mr. Chairman.

Mr. BURTON. Without objection. You may speak extemporaneously if you like.

Chairman ACKLEY. Thank you very much, sir.

I was listening to the debate here this morning. It strikes me sometimes as a tribal leader, with the partisan politics I have seen over the years, that as a native person we have to deal with whoever's party is in power, so we do not have the privilege at times to look at what we can or cannot do, and what is happening with the acts of Congress. We try to implement in good faith the rules and regulations that are handed down through the different agencies. We try to comply with all the different Federal laws that are out there and spelled out for us.

When we got involved as a tribal community to look at the Hudson proposal that was presented to the governing body by Mr. Havenick, and the surrounding tribes, I personally contacted the other tribal leaders and asked if there was going to be any objection to my tribe participating in the acquisition of this dog track for the benefit of our tribal members, so we could have some kind of economic relief.

In my statement that I submitted, I noted that our tribe has grown by leaps and bounds. We have a huge population of youth growing there. We do not have adequate funds to fill all the basic needs that our tribal community needs, since it is growing that way. Several times I have come in the last few years and asked for governmental support for a continuation of our housing program and needs that we have to meet those basic needs of our tribal membership on the reservation.

A lot of our tribal members on all reservations have returned back from the bigger cities after the relocation act failed, and people come back demanding jobs and different services from our tribal governing bodies. We just cannot meet those kinds of needs without adequate support from Congress, and the support of the treaties that our governments have signed over the years. We need all the help that we can get.

Gaming was going to be an avenue that Congress had supplied for us to look into being self-sufficient. Unfortunately for our tribes in the northern part of Wisconsin, that reality has not come there yet. We have substantial unemployment from the previous years where we have been depressed, and we need a lot of work and a lot of help.

I am listening to you gentlemen's debate, and I appreciate your concern. Over the years we have come to rely on Congress quite a bit. Hopefully the questions and answers that go on in this hearing today will give you some light as to what happened to us in our application for this Hudson project. I don't know if I can be of any assistance to either party, but I feel somehow that by participating

here, and with your committee staff members having come to us in Wisconsin on what happened to us, I wanted to cooperate fully.

I was a little shocked and disturbed when my attorney called me at home Friday and told me I was going to get subpoenaed to come here. As a tribal member, any time Congress would call me as a tribal leader I would come willingly, openly, without being subpoenaed. So it kind of frightens me, that I have to look at the resources I have. I have to have an attorney representing me because I don't know exactly what will happen to me by appearing here in front of a committee.

So I would like to express my concerns that way, and hope you understand what I am saying. As a tribal leader, any time any one of you gentlemen want to ask me a question, I will be happy to openly and honestly talk with you. I believe as a true government-to-government relationship, I believe we need to do that. So I am here today to cooperate in any way I can with both parties, to see if I can help you understand what happened with us.

I understand that there are people here from Hudson who oppose the expansion of what they consider gaming in their respective communities. We have not addressed all those concerns, but we have met with the elected leadership there in the city. When we talked with them, we understood we could proceed. So we are trying to cooperate every way we can.

I have watched this application go from the agency area here to Washington, DC central, to come to know that we got rejected, for whatever reason. I think it is all within these documents here. But I have never, as a tribal leader, seen the central office overrule the area director after they thoroughly investigated the application.

Denise Homer, the area director at the time in Minneapolis, came and visited my reservation personally. She and the area superintendent toured my facilities. They said that they would consider the application process. They looked at what we needed financially and they said they would try to give a favorable recommendation. They did that. They were the people there with the hands-on experience in the local area. The people from Washington, DC, after we were rejected, some of the people finally came to our area to look and see what Hudson was all about. The economic benefits from the Indian Gaming Regulatory Act would have helped our people.

With that, Mr. Chairman, I appreciate your time this morning, and if there is anything I can do for you, just feel free.

[The prepared statement of Chairman Ackley follows:]

TESTIMONY OF ARLYN ACKLEY, SR., TRIBAL CHAIRMAN

SOKAOGON CHIPPEWA COMMUNITY

Mr. Chairman, Members of the Committee, my name is Arlyn Ackley, Sr., Tribal Chairman of the Mole Lake Band of the Lake Superior Chippewa Tribe. Our Sokaogon Chippewa Community is located at the Mole Lake Indian Reservation in Northern Wisconsin. Mole Lake is the smallest, poorest Tribe in Wisconsin. It is located in the State's Northeastern region within Forest County.

Wisconsin's Forest County has been, and continues to be, one of the poorest counties in the State. In 1991, per capita income for Forest County was only $6,902 while the State average per capita income totaled $13,043. A study conducted by the Wisconsin Council on Children and Families determined that Forest County ranked second of the 72 Wisconsin counties in the level of child poverty. In 1990, 31.8% of the children of Forest County were classified as poor, compared to 14.9% for the State. Furthermore, the County ranked 71st in married couples median income ($22,396 annually) compared to a State average of $38,210. In addition to a depressed local economy, the Reservation's service population has increased from 148 members in 1975 to 546 members today - a 274% increase in service population.

With the County's economy dominated by the recession sensitive forest products and tourism industries, few Tribal members found gainful employment. These conditions are further documented by high unemployment rates of Tribal members throughout a 30-year period. Before gaming, Reservation unemployment was 84%; it still is at 35%.

Furthermore, as late as 1988 only 5% of the on-reservation adult members had an income above $7,000 annually. Despite poor economic conditions Tribal members have continued to return to the reservation. Many Tribal members living in urban centers were displaced by the Midwest's economic restructuring in the 1980's. Others returned home to escape urban poverty and violence. In effect, the BIA relocation programs of the 1950's and 1960's are now working in reverse. Within the last 30 years, the reservation's population has increased 369%. Given the Tribe has an enrollment population of 1,128, future service population increases are highly likely.

A number of years ago, Mole Lake established a small gaming enterprise which has provided jobs for some of our people and created a small stream of income for Tribal programs. Indian gaming jobs are not for everyone who needs a job, but they have provided some hope for some of our people. Yet, we are still at the bottom economically. We cannot meet even the most basic needs of our people. And every day the Tribe faces new challenges that require immediate attention.

The federal government's historic failure to meet its trust responsibility has created a 140-year backlog of reservation infrastructure needs for transportation, housing, education, health care, and business development. To address these unmet needs and provide basic services to our growing Tribal population, Mole Lake has adopted a strategy of concurrently developing Tribal economic, governmental, and social infrastructure.

The Tribe supports all efforts to expand and diversify the region's economic base

as long as the new employment opportunities are created in non-polluting, self-sustaining industries. Net profits from gaming have been targeted for use through a BIA approved plan. Mole Lake's net gaming revenues are allocated as follows:

-- 30.5% for funding Tribal governmental operations and programs such as food distribution, Tribal courts, environmental protection, day care, and housing;

-- 25.0% to support health programs, clinic expansion, human services, and education;

-- 12.5% for Tribal economic development;

-- 1.5% to supplement local fire protection and municipal services;

-- 0.5% for donation to charitable organizations; and

-- 30.0% for per capita distribution under formal guidelines established by the Tribal government and approved by the BIA.

Unfortunately, net gaming revenues are scarce. The Tribe's isolation from urban markets and the region's seasonal tourism economy greatly limit gaming's profitability on the reservation. Furthermore, being located within one of the poorest counties in the State leaves little chance for development of local gaming markets. While some Tribes may have the good fortune of considerable gaming revenue, Mole Lake is not one of them. Our limited revenues have enabled us to build a health clinic, however, we are unable to hire a doctor. Our daycare, which, we are trying to replace, is a veritable fire trap. We have a long list of Tribal members waiting to get decent housing. We have two and three families living in single family homes. Our needs are the unmet basic needs of Tribal members, not merely increasing income for individual members. While the BIA

approved plan provides for a per capita payment to be made to Tribal members, there was no payment this year and last year the total payment was one hundred and ninety four dollars ($194.00).

In this context, when our Tribe was invited to join the Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa in a joint gaming venture, our Tribal Council decided to participate. This appeared as an opportunity to benefit ourselves and to help two other Tribes who were also located a great distance from gaming markets. However, before we joined the venture, I personally called the Tribal leaders of the surrounding Tribes and asked if they had any problems with Mole Lake participating in this venture. No Tribe at that time offered any opposition.

Once we decided to join the venture, we put forth a maximum effort utilizing what limited resources we had. I personally made contact with the BIA agency in Ashland to insure that we were taking all of the necessary steps to properly put this land in to trust. Any problems that were identified were immediately addressed by our staff and the agency. After a good deal of effort, we finally were able to satisfy the agency. Our proposal was approved (at least the part the agency was responsible for) and forwarded to the BIA Area Office in Minneapolis.

There the process seemed almost to start over, but our staffs continued to work closely with all the appropriate people in reviewing and analyzing the data necessary to complete every phase of our application. In order to once again insure that we were doing everything properly, my staff and I, along with representatives of the other Tribes,

went to Minneapolis to meet with the BIA Area staff. We were instructed that not only did we have to complete the environmental study, but we had to provide a thirty (30) day period for others to comment on our actions. We did everything as we were asked to do. Finally, our application was approved and forwarded to the BIA Central Office in Washington, D. C. I have served as Tribal Chairman for many years and my experience has been that once we received approval at the Area Office, it should have been a formality for this land to be placed in trust. I believe this because the Area Office is the closest and most familiar with the Tribes that could be affected by any trust application. In this particular case, the Area Office is literally "just across the river" from the City of Hudson, Wisconsin. I felt this proximity was an even greater benefit to our Tribes, since the Area Office would definitely be aware of any possible "detriment" to the local communities and surrounding Tribes.

There could have been some small areas in which we or the Area Office could have made a mistake, but the trust responsibility of the Federal government to the Tribes obligates the government to assist us and to provide us an opportunity to correct any errors that we may have made. I instructed my staff to make themselves available to the Central Office to answer any questions, which they did. We knew that the Area Office would have thoroughly examined all of the technical details of putting land in trust. There would be additional concerns raised by the Indian Gaming office of Interior. The Interior staff did in fact ask us to clarify several points, including one that would assure our Tribe of a right-of-way to the property. The technical staff at Interior worked closely

with the Tribal staff and did not ever indicate to them that there would be any problem that could not be corrected. When no problems were disclosed but no approval was forthcoming, I began to wonder what the hold up was. I personally made a trip to the Department of Interior and met with Mr. Skibine, who told me that he had just been appointed to head the Indian Gaming Management Staff and would review it as soon as possible. After more time had passed with no communication or action, I returned for a second meeting with Mr. Skibine. It was at this time he informed me that John Duffy had met with the Minnesota Congressional delegation and some Tribes who were opposing our application and had granted them an additional comment period. We would not have known about this additional period unless we had inquired about the delay.

We suffered through this period and were led to believe by Interior staff that no new problems had been identified and that competition alone would not be enough to be considered detrimental to surrounding Tribes. Environmental problems had been looked at several times. As for local opposition, a local referendum had been passed approving of gaming at the dog track and no subsequent referendum has rescinded the local approval. Every indication was that there was nothing of significance that would prevent our placing the land into trust. We believed we had met every requirement and had done everything that the Interior staff required of us.

You can understand my shock and indignation when our application was turned down, especially when my staff working with the Department of Interior's Indian Gaming staff were not told of any item that would cause our application to be rejected. There are

two factors that are very relevant in this case. First, Interior just has not turned down applications that had been approved without reservations by the Area Office. Second, Interior should at least have provided us an opportunity to correct any problems that they found. These two principles were violated; we were given a final decision without recourse. I still question why were we not given opportunity to correct or at least respond to possible problems.

Mr. BURTON. We will get to the questioning in a moment. Just let me say, Chairman Ackley, that you or any of the panels have nothing to fear as long as you are truthful with us. The reason we sent the subpoena is to make sure that the panelists did appear. You were not being selected. You have nothing to fear.

Chairman ACKLEY. I understand, sir.

Mr. BURTON. Chairman Newago.

Chairman NEWAGO. Yes. Good morning. I came to this committee with a lot of the concerns, and not truly understanding what anybody would like to hear, but I am here to talk about the truth that I know and the involvement that I have had.

Congressman Waxman talked about where this all began in this process, and that it began with Mr. Havenick in Miami, FL. I don't believe that that is the case. This whole issue began when people from this Congress or a part of this Congress voted and passed this law, and the Senate voted on and passed this law, and provided Indian tribes the opportunity to step out beyond their reservation boundaries and put land in the trust for the purpose of gaming. I believe even the Supreme Court ruled on that particular issue. That is where this began.

I think that we viewed this as an opportunity that Congress had provided to us, and we took it upon ourselves to see the possibilities of economic prosperity that other tribes had experienced in the State of Wisconsin and other places that you all have the opportunity to see quite regularly.

I am the chairman of one of the poorest tribes, if not the poorest tribe in the State of Wisconsin. I don't have the opportunity to fly to Washington, DC, to shake your hand or your aide's hand or anybody in your office. I don't have that luxury. I don't have that opportunity. But this process began a long time ago, when you provided that opportunity.

And I want to mention that it is my understanding that it is a trust responsibility, that this Government has to native people, one of which I am. The agencies that work on behalf of whatever administration is in power have that responsibility to me as a native person. And they are required to look out for the best interests of me, at times.

It is kind of humorous, as I was talking to these gentlemen this morning, that I have 15,000 acres of land on the reservation. I have to get permission from the Bureau of Indian Affairs to cut trees down on my land. That is the responsibility of the Bureau of Indian Affairs, that the Bureau of Indian Affairs has for me.

And we went through this process. We took the steps that this agency laid out and that Congress laid out. We followed the steps, we followed the rules. In fact, we were planning to open a casino in Hudson, WI. We were led to believe that our application was sound and it was good, and that we were going to enjoy some of the benefits of gaming.

I sit in my office day after day and I have tribal members that come into my office. They ask me for my assistance. A lot of times they—a lot of people think, because we have a casino, we are making multimillions of dollars. I will guarantee the Members that the Red Cliff Tribe is not making millions of dollars. We employ 100 people. That is what our casino does.

But I have these people come in with genuine concerns, medical issues that they want to get addressed and need help with. As a matter of fact, I had my cousin come in to me. He said, "George, I need some help. My little girl needs to get corrective surgery on her legs. Can you help me out and give me some money so I can go with her?" I said, "Gee, I can't do that. But I will tell you what I can do, I can offer you a volunteer bingo. You can have a volunteer bingo." We did that, and he got his family together and they had a little bingo, and they raised themselves a couple hundred dollars so he could go with his daughter and be by her when she had this operation.

My health needs are not being met through this trust responsibility that this Government has for me. Our contract through HHS over-expended $277,000. I have no way of getting it. When I go up to the region and talk to the people up there to help me out, they are not providing me any of the assistance. This was an opportunity that you gave to me so I could access some of the revenue of gaming. I was hoping I was going to partake in that.

The other comment I want to make is that there are thousands and thousands of pages of documents, and anybody can extract one sentence out of these thousands of pages and make it say what they want it to say. But when we look at this packet—and I hope that everybody truly does look at it in its entirety to find out whether or not there is truly, truth being given here, because we as citizens a lot of times put everybody up on this moral plateau and think that they should do no wrong. There is some wrong that is being done.

I come here, being engulfed in this whole process. I am so removed from my element right now that it is a bit frightening. I get a bit shaky. But I am here to cooperate in any manner that I can, and I appreciate it.

Mr. BURTON. Thank you for your statement.

We will now go to the questioning. I will recognize my chief counsel, Mr. Bennett, for 30 minutes.

Mr. BENNETT. Thank you, Mr. Chairman.

Chairman Gaiashkibos, Chairman Ackley, and Chairman Newago, to the extent that you want to make additional statements, I will certainly yield a portion of my time to allow you to do it, Chairman Gaiashkibos, in a few minutes, if we can.

I think it is fair to state, in terms of Chairman Newago's comments and the statements that you all have submitted, that clearly the issues of unemployment and alcoholism and drug abuse have been rampant in your communities. Is that correct, essentially, for all three of you?

Chairman GAIASHKIBOS. Yes, that's correct.

Mr. BENNETT. Chairman Ackley, in terms of our obligation as chief counsel for the committee to make sure there is full disclosure of all members, you, sir, at one point in time had your own problem with alcohol or substance abuse, is that correct?

Chairman ACKLEY. Yes, sir, that's correct.

Mr. BENNETT. In fact, in 1989 you sold two ounces of cocaine to an undercover agent. Is that correct, sir?

Chairman ACKLEY. Yes, sir. I am a recovering alcoholic and a drug addict.

Mr. BENNETT. I don't say that to embarrass you in any way at all, but just in terms of obligation to all Members of this committee to understand the background of all witnesses who appear before it.

Chairman Newago, sir, I would also note that because you all are under subpoena, this committee pays for your travel expenses, so we have been able to assume your costs for coming here today. That is one of the reasons that we wanted to make sure that you were under subpoena. All three of you are present with your attorneys. If at any point in time you feel you have the need to refer to your counsel, please let me know.

Let me again, Chairman Gaiashkibos, before we get into a more detailed statement by you of some of the other points you wanted to raise, let me ask, have any of you gentlemen ever been politically active?

Chairman GAIASHKIBOS. Yes, counsel. I have been politically active in the State party system and also the national party.

Mr. BENNETT. In fact, you at one time were the Republican candidate for the Wisconsin State Senate; is that correct?

Chairman GAIASHKIBOS. Yes, that's correct.

Mr. BENNETT. You still are a registered Republican.

Chairman GAIASHKIBOS. No, I am not. I got so disillusioned with both parties, with the exception of one Independent Member that serves on this committee, I am currently an Independent, a fence-sitter.

Mr. BENNETT. Chairman Newago, you in fact are a Democrat, is that correct?

Chairman NEWAGO. That's correct.

Mr. BENNETT. Chairman Ackley, what is your political affiliation, sir?

Chairman ACKLEY. It is hard enough to be politically active on the Mole Lake Indian reservation at this time, but before my conviction I was a practicing Democrat.

Mr. BENNETT. With respect to the undertakings as to seeking to have casino gambling in conjunction with the dog track already at Hudson, WI, what studies were initially conducted, both in Ashland, WI, and also by the Minneapolis, MN, offices, with respect to any impact on the community? And all three of you can feel free to speak.

Chairman Gaiashkibos, let me start with you, sir. What studies were conducted?

Chairman GAIASHKIBOS. The partnership looked at doing the very best we could, because this was going to set a standard. This would be the first ever. We wanted to do a thorough job, so we employed the services of an economist, Dr. Murray, and also an Arthur Andersen study. I would hope that the committee has that so they could refer to that.

Mr. BENNETT. Had any of you ever dealt with any of the people within the Department of the Interior who ultimately came to be involved in this entire process, specifically with respect to Mr. Michael Anderson, who ultimately signed the rejection letter on July 14, 1995? We will go through the chronology in a minute.

Chairman Newago, had you ever had contact with Mr. Anderson before?

Chairman NEWAGO. No.

Mr. BENNETT. Did you know Mr. Anderson?

Chairman NEWAGO. No.

Mr. BENNETT. Chairman Ackley, did you know Mr. Anderson?

Chairman ACKLEY. I didn't personally know him. I was aware of his position as a member of the National Congress for American Indians. Our tribe has been a member in good standing for a number of years.

Mr. BENNETT. Chairman Gaiashkibos, did you know Mr. Anderson?

Chairman GAIASHKIBOS. Yes, counsel. Michael Anderson——

Mr. BENNETT. I am referring to the Department of the Interior individual appointed to a political position by the President, who ultimately signed the rejection letter on July 14, 1997.

With respect to that individual, what interaction did you have with him in previous years, sir? Chairman Gaiashkibos.

Chairman GAIASHKIBOS. Michael Anderson, when I was president of the National Congress of American Indians from 1991 to 1995, Michael Anderson was employed and worked directly under my leadership here in Washington, DC, in an office housed by the National Congress. He was employed as the executive director from March 1992 through May 1993, when he accepted a solicitor's position within the Bureau of Indian Affairs.

Mr. BENNETT. With the Clinton administration?

Chairman GAIASHKIBOS. That's correct.

Mr. BENNETT. Would you define Mr. Anderson as having been a friend of yours?

Chairman GAIASHKIBOS. An associate. I worked professionally with Mr. Anderson, and he headed up our office here, and he worked very diligently on many issues. Probably—I think the only major contention I had with Mr. Anderson was in 1992, when then-Governor Clinton was running as a candidate for President of the United States, and Mr. Anderson was faxing out—and I was active in the Republican party at that time—fliers on the Democratic meetings throughout the country, and faxing it over the National Congress' fax lines.

And I basically called him to task and asked him, stated to him that to be fair, I think he should also fax out Republican fliers or information on the Republican party, so that the tribal membership could make an informed decision and choice on the candidates.

Mr. BENNETT. The bottom line is, you had a little bit of a dispute with Mr. Anderson, again in terms of full disclosure to members of the committee, prior to the matter of the Hudson Dog Track?

Chairman GAIASHKIBOS. That's correct.

Mr. BENNETT. I believe you at one time applied for a position with the Clinton administration, with the Bureau of Indian Affairs; is that correct?

Chairman GAIASHKIBOS. That's correct, counsel.

Mr. BENNETT. Were you given that position?

Chairman GAIASHKIBOS. I was notified in July 1996 of eight candidates I was the No. 1 candidate, and I was selected as the Minneapolis area director for the Bureau of Indian Affairs. And 30 days after that I was told that because of political pressure coming from Congressman Obey and others to Secretary Babbitt, and my

political affiliation with the Republican party, that I was no longer a candidate as a Senior Executive Service employee.

Mr. BENNETT. Have you had any further interaction with Mr. Anderson politically, other than those events?

Chairman GAIASHKIBOS. I met him several times occasionally, casually. That was it.

Mr. BENNETT. Returning to the matter, then, of the dog track and the proposed casino, even prior to the Four Feathers partnership with your three tribes and Mr. Fred Havenick, who will testify this afternoon and was a witness requested by Congressman Waxman, in fact, there already was a dog track facility in Hudson, WI; is that correct?

Chairman GAIASHKIBOS. That's correct.

Mr. BENNETT. There is one as we speak. There is a dog track facility.

Chairman GAIASHKIBOS. That is correct.

Mr. BENNETT. There is gambling that goes on at that facility.

Chairman GAIASHKIBOS. That's correct, counsel.

Mr. BENNETT. The question here is in terms of adding a casino in terms of gambling to a facility that is already engaged in gambling at the Hudson Dog Track; is that correct?

Chairman GAIASHKIBOS. That's correct.

Mr. BENNETT. In terms of the initial application, when did your tribes initially apply to get the Class III permits so that you could add casino gambling to the dog track facility? Chairman Ackley or Chairman Newago, whichever one of you thinks you have the best knowledge of this, what would the date have been?

Chairman ACKLEY. I don't remember right now. I would have to look it up.

Mr. BENNETT. I believe that the court file, in terms of the opinion of Judge Barbara Crabb to which Chairman Burton made reference earlier, referred that it started in October 1993; is that correct?

Chairman GAIASHKIBOS. Yes, that's correct, sir.

Mr. BENNETT. I know we have some opponents of casino gambling who are here today and will be accorded an opportunity to speak, and I believe we also have some proponents who are going to come forward to speak. With respect to the matter of adding casino gambling or not, I gather there were supporters and opponents of this particular issue. It was a local issue; is that correct, sir?

Chairman GAIASHKIBOS. That's correct, counsel.

Mr. BENNETT. With respect to this local issue, exactly how did the resolution of this issue play out on a local level in terms of whether or not you were going to be able to add casino gambling to the Hudson Dog Track? There was indeed a referendum, was there not, to which the chairman made reference?

Chairman GAIASHKIBOS. Yes.

Mr. BENNETT. Let me ask you this: The referendum was a close one with the cities of Troy and Epson, WI, ultimately resulting in a vote in favor of casino gambling, is that correct, Chairman Gaiashkibos?

Chairman GAIASHKIBOS. Yes, that is correct, counsel.

Mr. BENNETT. By the same token, again in terms of fairness, the Hudson city council, the members of the city council, had voted 4 to 2 against the matter of casino gambling, had it not?

Chairman GAIASHKIBOS. After a change in the elected leadership, the mayor and the composition of the city council.

Mr. BENNETT. What had been the position of the mayor of Hudson, WI, with respect to casino gambling?

Chairman GAIASHKIBOS. During this time the mayor, I believe Mayor Reeder, was very supportive of the casino in Hudson.

Mr. BENNETT. Once you weathered that political storm in terms of opposition and/or support in the referendum, what steps did you take with respect to regulations with the Bureau of Indian Affairs to apply? And again, Mr. Gaiashkibos, if you want to make reference to your statement now in terms of the process you undertook, which steps were taken to accord with all Federal, State, and local regulations?

Chairman GAIASHKIBOS. Well, according to IGRA——

Mr. BENNETT. First, did you speak with the local agency office of the Bureau of Indian Affairs, specifically Mr. Jaeger in Ashland, WI?

Chairman GAIASHKIBOS. Yes, counsel. If I could just refer to my testimony on this, I would just like to read a paragraph from there, if I could.

Mr. BENNETT. Go ahead, sir.

Chairman GAIASHKIBOS [quoting].

> First, the Secretary of the Interior must determine that gaming on a particular site is appropriate under 25 U.S.C. Section 2719, which prohibits off-reservation gaming unless the Secretary, after consultation with the applying Indian Tribe and appropriate State, and local officials, including the officials of nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian Tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination . . .

and emphasis added there.

We followed the steps, and the first step in that process was to put this application together. It was a very long, grueling process, just three tribal governments here, and I look at the composition of your committee, trying to work out details. Three tribal governments also had to work out numerous details along with the non-Indian partner, and that was a very long, grueling process.

But when, yes, when we submitted the application it went to the agency level, to the superintendent, Robin Jaeger. I believe there was a timeframe, 30 to 60 days to respond. From Mr. Jaeger I think it was submitted down to the area office, who also under timeframes had time to respond.

Mr. BENNETT. That was in Minneapolis; is that correct?

Chairman GAIASHKIBOS. Yes.

Mr. BENNETT. The person there, I believe, was a Ms. Denise Homer; is that correct?

Chairman GAIASHKIBOS. That's correct, counsel.

Mr. BENNETT. Again, a career Department of the Interior employee?

Chairman GAIASHKIBOS. That's correct.

Mr. BENNETT. Did Ms. Homer reach the same determination in terms of approving your application?

Chairman GAIASHKIBOS. It sat there about a year because of the conditions and concerns that were raised, and the partnership had to address those concerns. Maybe Mr. Ackley can address those, be-

cause I was so busy during that time representing Indian country, but I was informed of many of the issues that were coming up. But I remember—was it the environmental issue that was one of the major hurdles?

Chairman ACKLEY. Right.

Mr. BENNETT. You dealt with those issues with the Department of the Interior officials both in Ashland as well as Minneapolis?

Chairman ACKLEY. We tried to as best we could with our staffs. I was coordinating the tribal planning department from the three reservations, and tried to meet their questions and concerns they had from the agencies, sometimes from the area director's office, and we would follow that when it got here to Washington, DC, that same scenario. I was coordinating the other tribes and their attorneys, and communicating with Mr. Havenick and seeing if we could help coordinate any information anybody along the process had, that we could try to answer at the time.

Mr. BENNETT. Incidentally, in terms of proponents for and people against the casino, Chairman Burton and Congressman Waxman received a letter recently from State Representative Barbara Linton.

Mr. Chairman, I believe by reference to exhibit 352, and I don't want to violate my agreement with Congressman Lantos with regard to these exhibits, but I believe we could have this be an exhibit. Exhibit 352 was a letter from a State Representative, Chairman Ackley, who I believe indicated support for the casino; is that correct?

Mr. BURTON. I will submit that for the record.

[Exhibit 352 follows:]

STATE REPRESENTATIVE
Barbara Linton
Member, Joint Committee on Finance and Legislative Council

January 20, 1998

U.S. Representative Dan Burton
U.S. Representative Henry Waxman
Room 2157 RHOB
Washington D.C

Dear Messrs. Burton and Waxman

I have been a member of the Wisconsin State Legislature for the past 12 years. Until recently, I have never felt the need to contact you or any member of the House Government Reform and Oversight Committee. However, since you are holding hearings involving constituents of mine, I feel that it is important that I contact you in order to assist you in reaching a full understanding of this issue.

My constituents are the Red Cliff and Lac Courte Oreilles Bands of the Wisconsin Chippewa . . . two of the three tribes that are partners in the effort to build a casino in Hudson, Wisconsin. Having participated in this effort with these tribes for the past six years, I was shocked and saddened by the Department of Interior's reversal and rejection of these tribes' efforts to obtain a casino license in Hudson. I have read many things in the press concerning the alleged "local" opposition and the opposition of some of my colleagues in the Wisconsin Legislature. I respectfully wish to set the record straight, in order to assist my constituents in an effort that I consider laudable and critical to the economic survival of the tribes.

History and geography have brought these tribes poverty. . . their per capita income is roughly $5,000 per year. . . their unemployment rate is more than 50% and their prospects for economic development are scarce. Geographically, these tribes do not enjoy an adjacent location to a major metropolitan area. In short, these tribes exhibit some of the most obvious problems that effect Native American people today. What is worse; Secretary Babbitt's decision to reject their opportunity for a casino at Hudson prevents these tribes from sharing in the economic benefits of tribal gaming. Therefore, when you consider the opinions of the "local" community, you must consider the plight of these tribes. . . constituents in my "local" community.

Office: Post Office Box 8952, Madison, Wisconsin 53708 ★ (608) 266-7502
Legislative Hotline 1-800-362-9472 (message only) ★ Fax (608) 266-7505

A lot has been made of a letter circulated by Representative Sheila Harsdorf and signed by 29 of my colleagues in the state legislature. Out of 132 members of the Wisconsin Legislature, the signatures of 29 members are being touted as "proof" that the Wisconsin Legislature is against the Hudson project. Although this letter was circulated to the entire legislature, 103 members chose not to sign Representative Harsdorf's letter. And it should be noted that the letter was not specific to the Hudson proposal, but was specific to the issue of off-reservation gaming expansion. I'm sure if you talk to Representative Harsdorf you will more accurately understand this issue.

Finally, as an elected official, I want to go on record regarding this very needlessly controversial issue. I am a Democrat and will always be a Democrat. The thought of my party being involved in campaign finance irregularities at the expense of my constituents is repulsive, and I find even more troubling when it effects truly needy people. Furthermore, it is really depressing when evidence exists that rich Minnesota tribes would use their casino money to finance a local opposition campaign in order to hurt disadvantaged tribes. The B.I.A. office in my district unconditionally supported the Hudson project . . . the Minneapolis regional B.I.A. office unconditionally supported the Hudson project and evidence exists that the Washington B.I.A. office was initially in favor of the Hudson project.

Let's get to the bottom of this and set things straight. The National Indian Gaming Regulator Act was created to help small tribes . . . not merely the ones with the money and muscle.

Sincerely,

Barbara J. Linton - Representative 74th Assembly

Representative Barbara J. Linton
74th Assembly District
Wisconsin State Assembly

cc: George Newago
Gaiashkibos

Chairman ACKLEY. I met with Representative Linton a few times.

Mr. BARRETT. Could we have a copy of that letter?

Mr. BENNETT. I believe it is already in the file, Congressman. I believe it already is.

In terms of the particular agreement with the city of Hudson, if we could have exhibit 351 placed on the screen here in the hearing room, and perhaps, Chairman Gaiashkibos, if you could address for the members of the committee the matter of this service agreement, specifically as to the benefits that were going to accrue to the city of Hudson, WI, as a result of casino gambling being placed into and in conjunction with the dog track.

Essentially, your three tribes were in fact to give a portion of the gambling receipts to the city of Hudson, WI, to make up for any tax loss by placing that property in trust to the Federal Government pursuant to the laws passed by Congress, thereby resulting in a tax loss to the community. To offset that, you would provide a profit to the city of Hudson, WI. There was to be money to go to the city from the proceeds; is that correct, chairman?

[Exhibit 351 follows:]

AGREEMENT FOR GOVERNMENT SERVICES

THIS AGREEMENT ("Agreement") is made as of this 18th day of April, 1994, by and among the LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS through its Economic Development Commission ("LCO EDC"), RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA INDIANS through its Economic Development Commission ("Red Cliff EDC"), SOKAOGON CHIPPEWA COMMUNITY MOLE LAKE BAND OF LAKE SUPERIOR CHIPPEWA INDIANS through its Economic Development Commission ("Sokaogon EDC"), all three of which sovereign Indian Tribes are federally recognized Indian governments organized pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. 461 et seq. (hereinafter collectively referred to as the "Tribes") and the CITY OF HUDSON, Wisconsin ("City"), a Wisconsin municipal corporation located in St. Croix County and the COUNTY OF ST. CROIX, WISCONSIN ("County"), the Wisconsin County in which the City of Hudson is located.

WHEREAS, each of the Tribes are in the process of purchasing an undivided one-third interest in certain land hereinafter described located in the City and seeks to transfer the land to trust status, as provided in the United States Code (25 C.F.R., Part 151) for the purpose of operating jointly through the LCO EDC, Red Cliff EDC, and Sokaogon EDC (collectively, the "EDCs") a Class III gaming facility, as defined in the Indian Gaming Regulatory Act (102 Stat. 2467);

WHEREAS, each of the Tribes have submitted its respective Tribal Resolution (LCO 93-82, Red Cliff 8-5-93 and Sokaogon 9-11-93) and its respective trust petition to the United States Bureau of Indian Affairs seeking to declare such land as trust property for the benefit of the Tribes pursuant to Section 5 of the Indian Reorganization Act of 1934;

WHEREAS, the land underlying the buildings and pari-mutuel dog track and dog kennels, approximately 55.82 acres, and more particularly and legally described in Exhibit "A" annexed hereto ("Indian Lands"), in the process of being acquired by each of the Tribes for use as a Class III gaming and related facilities, will become Indian Lands, which Indian Lands will be under the jurisdiction of each of the respective Tribes and be exempt from taxation and other regulations of the City and County due to the sovereignty of the Tribes and EDCs on Indian Lands;

WHEREAS, the land upon which the parking lot is situated and other land adjacent to the Indian Lands currently owned by Croixland Properties Limited Partnership ("Croixland") and used in its pari-mutuel operations, as more particularly described on Exhibit "B" annexed hereto, will be maintained in fee status, which is taxable property (the "Non-Trust Property");

WHEREAS, the Tribes currently do not possess adequate equipment or personnel to travel from their respective Tribal

communities to provide police, fire and emergency protection and services and public road maintenance, traffic control, education and other services for the Class III gaming and pari-mutuel dog track operation and the related facilities;

WHEREAS, the City of Hudson, and the County of St. Croix have the resources, equipment, personnel, and capability to provide police, fire, water, sewer, ambulance, rescue, emergency medical, education and other services;

WHEREAS, the Tribes, in recognition of the impact of the Class III gaming activity upon the Hudson community, desire to deal equitable with the City and County in all matters;

WHEREAS, the corporate authorities of the City and County are of the opinion that it is in the best interest of the City and County to enter into this Agreement;

WHEREAS, the Tribes, the City and the County are of the opinion that this Agreement is in their mutual best interests.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and understandings contained herein, the parties hereto agree as follows:

1. SERVICES

During the term of this Agreement, the City and County shall provide services to the Class III gaming facility and pari-mutuel dog track located on the Indian Lands, including general government services, public safety, such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively.

2. PAYMENT FOR GOVERNMENTAL SERVICES THROUGH CALENDAR YEAR 1995

(a) In consideration of the government services provided and to be provided by the City and County to and for the benefit of the Indian Lands during the period (the "Initial Period") from the date in calendar year 1994 when the Indian Lands are taken into trust by the United States of America resulting in the Indian Lands being exempt from the payment of real estate taxes and assessments and other taxes through December 31, 1995, the Tribes shall pay, as hereafter calculated and allocated, the agreed upon aggregate cost of government services which are allocated to or for the benefit of the Indian Lands (the "Allocable Amount"). The Tribes and the City and County have agreed that such Allocable Amount for the Initial Period is equal to $1,150,000, based upon the information provided to the Tribes regarding government services

EXHIBIT 351-2

00426

and in contemplation of distribution of the Allocable Amount to the applicable jurisdictions as set forth on Exhibit "C" annexed hereto. Since the payment by the Tribes of the Allocable Amount for the Initial Period is subject to and relates only to the period on and after the date that the Indian Lands are taken into trust by the United States of America and takes into account the projected date upon which the Class III Gaming on the Indian Lands will be open to the public, the Allocable Amount for the Initial Period payable by the Tribes shall be prorated based upon the portion of the Initial Period commencing on or after January 1, 1995 in which the Indian Lands are actually held in such trust. The Tribes shall pay the Allocable Amount (or any pro rata portion thereof) on a semi-annual installment basis to the County, as collection and payment agent, on January 31, 1995 and July 31, 1995, respectively. Upon receipt of each such semi-annual installment, the County shall apportion and distribute such installment to the applicable jurisdictions to effectuate the distribution of the Allocable Amount (or any pro rata portion thereof) in accordance with and in the same percentages as set forth in Exhibit "C" annexed hereto.

(b) Notwithstanding anything to the contrary contained hereinabove, since the Allocable Amount is paying for the cost of government services during the Initial Period, the Allocable Amount (or any pro rata portion thereof) payable by the Tribes for the Initial Period together with any amount paid by Croixland or any other party during calendar year 1994 or 1995 with respect to real estate taxes and assessments and personal property taxes for calendar year 1994 and/or real estate assessments due or payable in future years for the Indian Lands and/or Non-Trust Property shall in no event exceed the Allocable Amount.

3. PAYMENT FOR GOVERNMENTAL SERVICES FOR CALENDAR YEAR 1996 AND EACH CALENDAR YEAR THEREAFTER

(a) The Tribes shall also pay for government services to be provided hereunder to and for the benefit of the Indian Lands during calendar year 1996 and each year thereafter. The Tribes payment for government services for each of calendar years 1996, 1997 and 1998 shall be equal to the Allocable Amount and for each calendar year thereafter commencing with calendar year 1999 shall be determined based upon an adjustment of the Allocable Amount as hereinafter set forth. The aggregate annual payment for government services for each calendar year commencing with 1999 during the term hereof shall be equal to the Allocable Amount, as adjusted (if at all) for the immediately preceding calendar year by this provision, multiplied by 1.05.

The Allocable Amount or adjusted Allocable Amount (as the case may be) payable in any calendar year commencing with calendar year 1996 shall be paid on a semi-annual installment basis made payable to the County, as collection and payment agent, on January

31st and July 31st of each such year. Upon receipt of each such installment, the County shall apportion and distribute such installment to the applicable jurisdictions in accordance with and in the same percentages as set forth in Exhibit "C" annexed hereto.

(b) Each of the City and County hereby further acknowledges and agrees that after the Indian Lands are placed in trust as contemplated hereunder no accrued or unaccrued real estate taxes or assessments or personal property taxes (or any penalties or interest thereon) shall be due or payable with respect to the Indian Lands by any person or entity except for those that the payment thereof is delinquent and overdue as of or prior to the date the Indian Lands are taken into trust. The Tribes hereby agree that on or prior to the Indians Land being taken into trust, the Tribes will cause Croixland to pay any such delinquent and overdue real estate taxes and assessments and personal property taxes (or any penalties or interest thereon) with respect to the Indian Lands and the Non-Trust Property related to any calendar year through 1993. In addition, in the event that the Indian Lands are not taken into trust by the United States of America until after December 31, 1994, the Tribes will cause Croixland to pay a prorata portion, based upon the portion of calendar year 1995 that the Indian Lands are not held in trust, of the real estate taxes and assessments and personal property taxes for calendar year 1994, which prorata portion shall be paid by Croixland to the County, as payment and collection agent, on a semi-annual basis on January 31, 1995 and July 31, 1995, or such other dates agreed to by Croixland and the County and City.

(c) In the event that any installment of the Allocable Amount or adjusted Allocable Amount (as the case may be) is not paid within ten (10) days of its due date, simple interest at the rate of twelve (12%) percent per annum shall accrue from the due date of such installment until such installment is paid in full together with any accrued interest thereon.

4. THE NON-TRUST PROPERTY

Since the Non-Trust Property shall continue to be subject to real estate taxation and assessment, any real estate taxes and assessments and personal property taxes paid with respect to the Non-Trust Property with respect to any calendar year shall be treated as a credit against the payment by the Tribes of the Allocable Amount (as adjusted) for such calendar year; provided, however, that, notwithstanding the foregoing, any increased amount in the real estate taxes and assessments and personal property taxes with respect to the Non-Trust Property in any calendar year arising solely and only from (a) improvements having been made to the Non-Trust Property wholly unrelated to using the Non-Trust Property as a parking lot, (b) the construction of a multi-story parking ramp or garage on the Non-Trust Property or (c) any future special assessments against the Non-Trust Property to the extent

assessed in compliance with the statutes, ordinances and regulations of the City and County on the same basis as other real estate located in such jurisdictions shall not be treated as a credit against the payment by the Tribes of the Allocable Amount (as adjusted); provided further, however, that the Tribes are furnished appropriate written evidence supporting such increased amount. The parties acknowledge that the total payment for government services provided hereunder includes those services provided to or for the benefit of the Non-Trust Property with respect to its use as a parking lot.

5. LIABILITY OF CITY AND COUNTY

The City and County agrees to make available to the Indian Lands and the activities thereon services normally provided by the City and/or County to other commercial users within the City or County at the same cost or charge that is made to other commercial users or without cost or charge (other than general real estate taxation and assessment) if provided without cost or charge to other commercial users (as the case may be). The services provided include, without limitation, police, fire, ambulance, rescue and emergency medical protection, road maintenance, education and access to water, sanitary sewer and storm sewer facilities, and other services that are under the control of the City or County or are customarily provided to other commercial properties within the City or County.

6. LIABILITY OF TRIBES AND ECONOMIC DEVELOPMENT CORPORATIONS

By this Agreement, as to the City and County only, each of the Tribes and each of the EDCs hereby waives any rights of sovereign immunity and each of the Tribes, on behalf of their respective EDC, hereby waives any rights of sovereign immunity which it may confer on its respective EDC only as to matters arising out of this Agreement, the Class III gaming or other activities on the Indian Lands, and only to the extent necessary to allow the City and County to enforce their respective rights under this Agreement, and each of the Tribes and each of the EDCs consents to be sued in and the in personam jurisdiction of the United States District Court for the Western District of Wisconsin, the United States Court of Appeals for the Seventh Circuit and the United States Supreme Court. If, and only if, the United States District Court for the Western District of Wisconsin lacks jurisdiction or refuses to take jurisdiction, then, and only then, each of the Tribes consents to be sued by the City or County in and the in personam jurisdiction of the appropriate court of the State of Wisconsin located in St. Croix County, Wisconsin, wherein an action may be brought for enforcement of this Agreement. Each party hereto agrees to diligently raise any and all arguments for United States District Court venue and jurisdiction.

Said waiver of sovereign immunity is specifically limited to the following actions and judicial remedies: the enforcement of the terms of this Agreement and the enforcement of State and other governmental laws, codes, ordinances and regulations to the extent compliance therewith is required under the respective Tribes' Gaming Compacts of 1991 with the State of Wisconsin. Each of the Tribes agrees to the jurisdiction of the City Police Department on Indian Lands and to submit to the jurisdiction of all other governmental law enforcement agencies for the enforcement of Federal, State, and City criminal laws or ordinances.

Service of Process (Summons and Complaint) may be made upon, and each of the Tribe's and the respective EDC's agent for acceptance of such service of process on them is hereby designated as, either the Gaming Casino Manager, Greyhound Racetrack Manager or the General Manager, as the case may be, who is located on the Indian Lands, or by a copy of the Complaint and Summons sent certified mail, postage prepaid, return receipt requested, to the place for notices, as set forth in this Agreement.

In the event of litigation arising out of this Agreement, the prevailing party in any such litigation shall be entitled to an award and judgment for its reasonable attorneys' fees and costs, but only if said litigation is found to be brought in bad faith or frivolous.

Notwithstanding anything to the contrary contained herein, the enforcement of any award, judgment, order or other legal remedy against either of the Tribes or EDCs or their respective assets arising under or in connection with this Agreement and the authority or jurisdiction of any court in connection with the execution against any of the assets of either of the Tribes or EDCs shall only extend to the assets of the Tribes and/or EDCs located on the Indian Lands described in Exhibit "A" or used in or part of the business operations on the Indian Lands described in Exhibit "A", including revenues generated from such business operations on the Indian Lands described in Exhibit "A" to the extent such revenues have not as yet been distributed to the Tribes or EDCs or paid to any other party.

7. TERMINATION OF AGREEMENT

If the Indian Lands cease to be land held in trust by the United States of America for the benefit of the Tribes or Class III gaming is no longer operated on the Indian Lands, this Agreement shall terminate, subject to the provision set forth in Section 9(b) hereof, and the obligations of the Tribes to make any payments pursuant hereto shall cease. Notwithstanding the foregoing, in the event that this Agreement terminates as a result of Class III gaming no longer being operated on the Indian Lands but the Indian Lands remain in trust, the Tribes, on the one hand, and the City and County, on the other hand, will immediately commence good faith

negotiations in order to reach a written agreement as to the cost of and manner of payment for the government services that will continue to be provided to or for the benefit of the Indian Lands after the cessation of Class III gaming thereon based on the expected use of the Indian Lands thereafter. In the event that the parties have not reached a written agreement within ninety (90) days after the cessation of Class III gaming on the Indian Lands, then the parties agree that the cost of and manner of payment for the government services to be provided by the County and City shall be determined by arbitrators in accordance with the rules for commercial arbitration of the American Arbitration Association ("Association"). Each of the Tribes, on the one hand, and the City and County, on the other hand, will appoint one arbitrator and notify the other of them of such appointment within fifteen (15) days after the expiration of the negotiation period, and the two arbitrators appointed by the parties shall appoint as soon as possible thereafter a third arbitrator who shall be a neutral arbitrator from a panel provided by the Association. The arbitrators in reaching their determination will take into consideration all facts and information presented by both sides (including the value of the Indian Lands based upon its expected future use). The arbitrators shall reach such determination as soon as possible, but in all events within one hundred eighty (180) days after of the cessation of Class III gaming on the Indian Lands. The determination of the arbitrators shall be final, conclusive and binding upon the parties hereto. Each of the two sides shall pay the fees and expenses of the arbitrator appointed by it and fifty (50%) percent of the fees and expenses of the neutral arbitrator.

8. CONDITION OF EFFECTIVENESS OF AGREEMENT

This Agreement and all of the terms and provisions hereof is contingent upon and shall not be enforceable or operative until the final approval of the United States Department of the Interior, Secretary of the Interior ("the "Secretary") regarding the placing of the Indian Lands into trust by the United States of America for the benefit of the Tribes and the Secretary's approval of this Agreement. In the event that a determination is made by the Secretary not to take the Indian Lands into trust or to approve this Agreement, this Agreement shall be null and void and have no further force or effect.

9. COMPLIANCE WITH FEDERAL LAWS AND CERTAIN STATE AND LOCAL LAWS

(a) The Tribes and the EDCs shall comply with (i) all applicable Federal laws relating to or dealing with Class III gaming or employment (such as OSHA, Fair Labor Standards Act, Federal equal opportunity laws and Americans with Disabilities Act) on the Indian Lands, (ii) the City's zoning ordinances and codes and (iii) the State of Wisconsin's workers compensation statutes

and regulations. In no event shall any local statute, law, ordinance or regulation prohibit or restrict in any manner the operations of Class III gaming or greyhound pari-mutuel racing on the Indian Lands or effectively impose any tax, fee or charge on Class III gaming or greyhound pari-mutuel racing.

(b) Notwithstanding the termination of this Agreement, so long as the Indian Lands continue to be held in trust by the United States of America for the benefit of the Tribes, the Tribes and EDCs shall comply with the City's zoning ordinances and codes.

10. NOTICE

All notices, demands, requests, and other communications under this Agreement shall be in writing and shall be deemed properly served when received if delivered by hand or expedited messenger service with proof of receipt to the party to whose attention it is directed or when received if sent, postage prepaid, by registered or certified mail, return receipt requested addressed as follows:

If intended for Tribes and/or EDCs:

Lac Courte Oreilles Band of Lake Superior Chippewa Indians
LCO Tribal Office
Rte 2, Box 2700, Trepania Road
Hayward, Wisconsin 54843
Attention: Tribal Chairman

-and-

Red Cliff Band of Lake Superior Chippewa Indians
Tribal Administration Building
Highway 13
Bayfield, Wisconsin 54814
Attention: Tribal Chairperson

-and-

Sokaogon Chippewa Community
Sokaogon Tribal Office
Rte 1
Crandon, Wisconsin 54520
Attention: Tribal Chairman

If intended for City:

City of Hudson
505 3rd Street
Hudson, Wisconsin 54016
Attention: Mayor

If intended for County: St. Croix County
1101 Carmichael Road
Hudson, Wisconsin 54016
Attention: Chairman.

11. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Tribes, EDCs, City and County have respectively signed this Agreement and caused their seals to be affixed and attested as of this 18th day of April, 1994.

LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

By: _____
Chairman

ATTEST:

_____
Secretary of LCO Tribal Council

RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

By: _____
Chairperson

ATTEST:

_____
Secretary of Red Cliff Tribal Council

SOKAOGON CHIPPEWA COMMUNITY

By: _____
Chairman

ATTEST:

_____
Secretary of Sokaogon Tribal Council

LAC COURTE OREILLES ECONOMIC DEVELOPMENT COMMISSION

By: _____

ATTEST:

_____

EXHIBIT
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RED CLIFF ECONOMIC DEVELOPMENT COMMISSION

By: _____

ATTEST:

_____

SOKAOGON ECONOMIC DEVELOPMENT COMMISSION

By: _____

ATTEST:

_____

CITY OF HUDSON

By: _____
Mayor

ATTEST:

_____
City Clerk

COUNTY OF ST. CROIX

By: _____
Chairman

ATTEST:

_____

EXHIBIT 351-10

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Chairman GAIASHKIBOS. Yes, that is correct. We signed a service agreement that in lieu of taxes we were going to provide the city of Hudson and the county approximately $1.1 million annually, with a 5 percent increase, through 1999.

Mr. BENNETT. What was the approximate tax loss going to be to Hudson, WI, as a result of taking this property off the tax rolls and placing it in trust to the Federal Government pursuant to the Indian Gaming Regulatory Act?

Chairman GAIASHKIBOS. Counsel, I am going to guesstimate here. I believe Mr. Havenick would have the exact figures. It was somewhere around $600,000 annually, and with the $1.1 million we were going to pay the city and county around a half a million dollars, in addition, over and above the lost tax revenue.

Mr. BENNETT. Directing your attention to the chronology in 1995, up to early 1995, up to February 1995, were any of you advised of any problems with respect to the process of applying to have a casino here at the Hudson Dog Track?

Chairman GAIASHKIBOS. Counsel, from Lac Courte Oreilles, we were never notified during this process.

Mr. BENNETT. We will get into the events in early 1997, but up to February 8, 1995, Chairman Ackley, was there any indication to you that there was a problem that this was going to be rejected in any way?

Chairman ACKLEY. Not that I was aware of.

Mr. BENNETT. Chairman Newago, as to you, sir?

Chairman NEWAGO. No.

Mr. BENNETT. Directing your attention to early 1995, were you, any of you aware of a meeting held on February 8, 1995, with the Minnesota congressional delegation and with Minnesota Indian tribes opposing your effort for economic reasons, attended by Mr. George Skibine, who is due to testify here tomorrow, as well as Mr. Duffy from Secretary Babbitt's office? Were any of you aware of that meeting?

Chairman ACKLEY. I was made aware of that after the meeting was over.

Mr. BENNETT. Let me direct your attention to some exhibits here that might assist you in that regard, Chairman Ackley. I will show you exhibit 298, if we can, on the projection screen in the hearing room.

That is a letter which you addressed to Secretary Babbitt sometime after March 3, 1995; is that correct?

[Exhibit 298 follows:]

SOKAOGON CHIPPEWA COMMUNITY
MOLE LAKE BAND
RT. 1, BOX 625
CRANDON, WISCONSIN 54520-9635
(715) 478-2604

Secretary Babbitt
Department of the Interior
Washington, D.C.

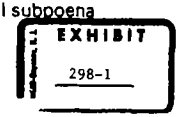
Secretary Babbitt

On March 3, 1995 at 2:30 in the afternoon, I sat in a Senate hearing room and listened to your brief speech before Senator McCain about your concern for Indians and the Bureau of Indian Affairs (BIA). I listened to your comments on Ada Deer traveling across the country consulting with the tribes in government-to-government relationship according to our treaties and President Clinton's April 29, 1994 Memorandum. An hour and half later in discusssions with the Director of Indian Gaming, Department of Interior, it was evident that not everyone in the Department of Interior is aware of the trust responsibilities of the Federal government and the consultation process that is to take place between tribes and all Federal agencies.

My tribe and two other Wisconsin Tribes have placed an application to put into trust land to be used for gaming purposes. We (the three tribes) have followed the regulations and responded to all the requirements of the BIA Minneapolis Area Director including waiting for the required 30 days for comments for all possible affected parties. Minnesota tribes were given opportunity to comment on our application for trust land in Wisconsin. However, earlier when the Minnesota tribes built their casinos, the closest and most effected Wisconsin Tribe (Lac Courte Oreilles) was not given an opportunity to comment. Regardless, the time was provided according to regulation, the application was reviewed and forward[illegible] from the BIA Area office to the Department of Interior. Up to that point the consultation process was working, then it stopped.

The Director of Indian Gaming was visited by the Minnesota congressional Delegation and at that meeting the state of Minnesota was given an exclusive right to comment on our application that was submitted to your department. Unfortunately the Director felt there was no need to inform our tribes or the Wisconsin Congressional Delegation. Our tribes were never informed that an additional comment period was taking place or that we could provide additional comments which the Director decided is allowed under the law. However, we have been unable to find where this special comment period for only selected citizens is provided for in the regulation.

Most important is that your Director has decided that there is no need to consult with tribes in decisions that affect them. Could you and would you please explain this to me as the Tribal Chairman of my Tribe so that I may explain this type of exclusion of government-to-government relationship to my tribal members. If your Director of Indian Gaming is excluded from



President Clinton's directive, please notify our three Tribes immediately so we may find out if there are Federal employees that do not have to adhere to a Presidential directive

Sincerely,

Arlyn Ackley, Sr.
Tribal Chairman

Chairman ACKLEY. Yes, sir.

Mr. BENNETT. In that letter, do you address the fact that you at some point in time learned about—by the way, I note that letter was not dated, but it was clearly sometime after March 3, because you made reference to your appearance here in Washington. Do you address the question of not having been advised of such a meeting with Secretary Babbitt?

Chairman ACKLEY. Yes. I was pretty angry at the time.

Mr. BENNETT. I think that this letter also makes reference to the Presidential order, and I would ask that exhibit 350 be placed on the projection screen as well. These are all in the exhibit packets, Mr. Chairman, for the Members.

With respect to the requirement as set forth in President Clinton's directive of April 29, 1994, you note in your letter to Secretary Babbitt that that order of President Clinton specifically provides that the executive department shall consult, to the greatest extent possible, with tribal governments prior to taking actions adverse to them.

Are you aware of that provision as set forth in President Clinton's directive, Chairman Ackley?

[Exhibit 350 follows:]

Citation FR 22951 FOUND DOCUMENT Database PRES Mode Page
)94 WL 163120 (Pres.)
ublication page references are not available for this document.)

Memorandum

Government-to-Government Relations With Native American Tribal Governments

April 29, 1994

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal

(Publication page references are not available for this document.)
rograms, in appropriate circumstances, to address specific or unique needs of ribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, o any other person.

The Director of the Office of Management and Budget is authorized and directe to publish this memorandum in the Federal Register.

WILLIAM CLINTON
THE WHITE HOUSE,
Washington, April 29, 1994.

59 FR 22951, 1994 WL 163120 (Pres.)
END OF DOCUMENT

Chairman ACKLEY. Yes, sir.

Mr. BENNETT. Did you get any response from Secretary Babbitt in terms of clearly his failure to comply with that directive of the President?

Chairman ACKLEY. No.

Mr. BENNETT. Let me, if I can, specifically direct your attention to exhibit 302, again on the projection screen in the hearing room. That letter is from John Duffy, counsel to Secretary Babbitt, produced pursuant to subpoenas issued by this committee.

Looking at that letter dated March 27, there is reference to, "As you may know, on February 8, 1995," and then there is a discussion about a meeting with opposing tribes, as well as members of the congressional delegation of Minnesota, in terms of your application. There was apparently—and I believe Judge Barbara Crabb in the Federal litigation, Mr. Chairman, in Wisconsin, has made reference to this 6 weeks' delay before you were notified.

Chairman Ackley, did you have any knowledge of the meeting with the Minnesota delegation and Mr. Skibine and Mr. Duffy and tribes opposing your efforts for economic reasons, for a period of 6 weeks? When did you finally find out that there had been this February 8 meeting?

[Exhibit 302 follows:]

Heather - As per my e-mail on Sokaogon 02733C

Scott Keep

MAR 27 1995

Honorable Arlyn Ackley Sr.
Chairman
Sokaogon Chippewa Community, Inc.
Rt. 1, Box 625
Crandon, Wisconsin 54520

Hill Hudson dogtrack

Dear Chairman Ackley:

As you may know, on February 8, 1995, I met with Senator Paul Wellstone, Representatives Jim Oberstar, David Minge, Bill Luther, Bruce Vento and tribal representatives from the Mille Lacs, Bois Forte, Leech Lake, Shakopee Mdewakanton Sioux, Red Lake and St. Croix Tribes, to discuss their concerns with your application to place land located in Hudson, Wisconsin, in trust for the Sokaogon Chippewa, Community, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians and the Red Cliff Band of Lake Superior Chippewa Indians for gaming purposes.

At this meeting, tribal representatives indicated that they did not believe the Bureau of Indian Affairs (BIA) had complied with the tribal consultation requirements of Section 20 of the Indian Gaming Regulatory Act, and that they lacked sufficient information to adequately respond to your proposed acquisition. They specifically requested that they be granted additional time to submit reports detailing the impact of the proposed acquisition on nearby tribes. We agreed to this request, but did not set a deadline for the submission of this information. In order not to unduly delay consideration of this proposed acquisition, we have advised the parties with whom we met on February 8 that any additional information must be submitted by April 30, 1995, in order to be considered by the Department of the Interior in making the Section 20 determination.

Please be assured that our commitment regarding the submission of additional information will not delay consideration of other aspects of your application by the BIA's Indian Gaming Management Staff. Should areas of concerns with the application be identified, you will be so notified.

Sincerely,

/s/ John J. Duffy

John J. Duffy
Counselor to the Secretary

EXHIBIT 302

bcc: Secy Surname, Secy RF(2), 101-A, Bureau RF, Surname, Chron, Hold
BIA:GSkibine:trw:3/16/95:219-4068 wp:a:ackley.dog
corr per JDuffy:trw:3/27/95

Identical letters sent to: galashkibos, Lac Courte Oreilles Band of Chippewa
Rose Gurnoe, Red Cliff Band of Lake Superior Chippewas

Chairman ACKLEY. I actually watched some of the tribal leaders in Washington, DC. I was present here. It brings back my memory a little bit by looking at the letter. At the time I was looking at the places in the tribal leadership, and I recognized them in the State of Minnesota and also from Wisconsin, who were present here in Washington, DC. I was concerned, and I still am, about the meeting they had with respect to Mr. Skibine.

I had met with him twice during this process. Mr. Skibine informed me when he just got appointed as the director for the Gaming Management Staff, and I met him after he got settled in. I was also present at a meeting when he informed me he had just left Mr. Duffy's office to extend the comment period, and I was pretty angry about that also.

Mr. BENNETT. When you expressed that anger, did you ask Mr. Skibine why for a period of 6 weeks nobody had notified you about this meeting?

Chairman ACKLEY. I was back and forth to Washington, DC, I was trying to get information, I was looking for help, what was going on, why was I not consulted with.

Mr. BENNETT. Was there ever any explanation to tell you, apart from not even being invited to the meeting, why you were not even notified? Was there ever an explanation of that?

Chairman ACKLEY. No.

Mr. BENNETT. At any time, did anyone from the Department of the Interior accord any of these three tribes who you gentlemen represent any opportunity to cure any problems that may have arisen with respect to this February 8 meeting?

Chairman ACKLEY. Mr. Bennett, I was made aware with Mr. Skibine's staff that the problem to place the land in trust was going to become an issue from his observation of the application; that the parcel of land that was going to be placed in trust might be landlocked, and that he wanted to guarantee the tribes had access to the highway; and that there was a parking lot on the north side of the dog track, I believe, and he wanted to guarantee that if the land was going to be placed in trust, then we needed to have access to the property. Otherwise it would not be done properly and it would not do any credit to the tribes, and he wanted to make sure of that. That is the only concern that I recollect that he had.

Mr. BENNETT. Is that consistent with your recollection as well, Chairman Gaiashkibos?

Chairman GAIASHKIBOS. Yes, that's correct. When I was notified of this by Mr. Ackley and others involved in the project, I was quite disheartened to learn, that there was a closed meeting, but that the process was reopened again and we were never notified so we could submit additional comments as well.

Mr. BENNETT. Secretary Babbitt has made a comment to the press recently that he was—I think his words were "out of the loop" with respect to the Hudson Dog Track question. But in fact I think, Chairman Ackley, you attended a meeting on or about April 8, 1995, when Secretary Babbitt was in Wisconsin, in Green Bay, WI, at the Radisson Hotel, where the specific issue of the Hudson Dog Track was discussed; isn't that correct?

Chairman ACKLEY. Yes, with the other tribal leaders of the area, right.

Mr. BENNETT. Secretary Babbitt was part of that conversation?

Chairman ACKLEY. Yes.

Mr. BURTON. Let me just try to illuminate the issue a little bit. At that meeting that we are talking about, there were lobbyists, there were people from the opposing tribes, there were people from the Department of the Interior, and you were excluded. You were the petitioning group of Indians that wanted to have the casino approved. Is that correct that you were weren't informed?

Chairman ACKLEY. Yes. No, we weren't.

Mr. BURTON. The opponents were informed and were at the meeting, but you weren't.

Chairman ACKLEY. Until it was over with, right.

Mr. BURTON. Let me ask you this: Up until that time, did you have any indication that your application was going to be rejected, or did you have an indication that it was moving along properly and was going to be accepted?

Chairman ACKLEY. The indication was it was moving along and would be accepted.

Mr. BURTON. Was there any indication that you knew prior to that meeting that it was going to be rejected?

Chairman ACKLEY. No.

Mr. BURTON. Mr. Bennett.

Mr. BENNETT. Yes. Continuing along with that, during the 6 weeks delay before you even knew about the meeting, and then directing your attention up to around April 8, 1995, when Secretary Babbitt was personally in Wisconsin at a meeting at the Radisson Hotel and discussed this matter, again, continuing with the chairman's questions, was there any indication to you at that point in time that your application for the casino was going to be rejected?

Chairman ACKLEY. No. He was quite clear that he wanted to steer away from discussing the application until it went through the Gaming Management staff personnel, to make sure that he was talking from the knowledge that he had gained from those people overseeing the application.

Mr. BENNETT. With respect to in terms of trying to define what we will hear about later, in terms of a standard set by Congress in terms of whether there is detriment to the community, were any other defects in your application at any point in time—were any of the three of you advised that there was any particular defect in your application or a detriment to the community that you were given an opportunity to cure and correct, any problems? Were any of the three of you ever so notified prior to July 14, 1995? Chairman Newago.

Chairman NEWAGO. No.

Mr. BENNETT. Chairman Ackley.

Chairman ACKLEY. No.

Mr. BENNETT. Chairman Gaiashkibos.

Chairman GAIASHKIBOS. No.

Mr. BENNETT. Directing your attention to the trips I think that you made reference to, Chairman Ackley, in Washington, I believe that this reference first of all to July 14, 1995, the rejection letter signed by Mr. Michael Anderson, did any of you receive any advance notice prior to actually receiving that rejection letter?

Chairman GAIASHKIBOS. No.

Mr. BENNETT. Any of you?

Chairman GAIASHKIBOS. No. From Lac Courte Oreilles, no.

Mr. BENNETT. Chairman Ackley.

Chairman ACKLEY. No.

Mr. BENNETT. Chairman Newago.

Chairman NEWAGO. No.

Mr. BENNETT. Basically, after that rejection letter of July 14, Chairman Ackley, you took some offensive to find out what happened, didn't you?

Chairman ACKLEY. Yes.

Mr. BENNETT. Exactly what did you do, sir?

Chairman ACKLEY. Well, I contacted Loretta Avent at the White House to see if she could give me some kind of explanation of why we were not consulted with in the first place. Can I make a statement?

Mr. BENNETT. Certainly, sir, go right ahead.

Chairman ACKLEY. I got elected as a tribal leader first in 1983. I felt very privileged and honored to be invited to the White House and listen to President Bill Clinton give us a replica medal on the South Lawn, to give us a speech about the consultation process, because prior to us receiving that invitation, as a tribal leader I had never been invited to the White House before. I have been to Washington, DC, a few times. So we finally got to come to the Old Executive Building and talk with somebody, and Loretta Avent was the person in the Indian Office, and we had access finally.

After I got the letter I wanted to use that access to find out what was happening within the administration, so I went there to find out if somebody could give me an explanation on why I wasn't consulted with. After reading the letter, and knowing that the Bureau of Indian Affairs was assisting us in the finding of no significant impact—it was called a FONSI—we learned that there were problems with the environmental concerns with our application, without having the opportunity to correct them.

Mr. BENNETT. No one ever notified you of that fact or gave you an opportunity to correct any alleged problems, correct?

Chairman ACKLEY. I didn't know that, sir, until I got the letter.

Mr. BENNETT. Directing your attention, if I can, on the exhibit screen in the hearing room, to exhibit 331 that is in the exhibit book, as well as—first of all, as to 331, this is a memorandum that you sent to Ms. Loretta Avent on August 3, 3 weeks after the rejection, essentially noting the problems that you have just addressed here today; isn't that correct, Chairman Ackley?

[Exhibit 331 follows:]

MEMORANDUM

August 3, 1995

TO: Ms. Loretta Avent
Special Assistant to the President
for Intergovernmental Affairs

FROM: Arlyn Ackley, Sr.
Tribal Chairman
Sokaogon Chippewa Community

RE: Disapproval of Hudson Application for Trust Status

We have been able to obtain information from the Department of the Interior's Indian Gaming Office that their staff people disagreed with the disapproval of our trust application signed by Michael Anderson of the Department of Interior.

All my information indicates that Interior's staff was disappointed and completely disagreed with this decision. In fact, and I quote "there was no real evidence to support disapproval". The staff tells us that the people who made the final decision did not follow § 20 of the Indian Gaming Regulatory Act of 1988. That this decision was purely a discretionary-/political one.

In the letter, Mr. Anderson stated that there was a problem with the St. Croix Waterway. However, the staff tells us that this small issue could have been explained but we were not given the opportunity to respond to this.

The Department of the Interior staff indicated to us that they could not find anything detrimental in our application either to nearby tribes or to surrounding communities. Moreover, Mr. Anderson states that this property acquisition would be detrimental to a nearby tribe.

Another quote from the Department's staff was "What is the point of § 20 if not to be helpful to remote tribes?". They indicated to us that the extraordinary thirty (30) day period that was provided to our opponents which allowed them to submit an additional

economic study did not provide any substantial information that would point to the proposed facility being detrimental to the surrounding communities or tribes. They commented that there are two criteria. One -- it should be in the best interest of the Indian tribe (applicant) Two -- Could not be detrimental to the surrounding communities or nearby tribes. Their indication to us is that they were both disappointed and that they disagreed with the disapproval of the trust application.

As the Chairman of my tribe I must protest the Department of the Interior's treatment of our application for the placing of the Hudson Dog Track into trust status. The Minneapolis BIA Area Director and staff followed the letter of the law in approving our application. The Department of the Interior's staff (per our information) also carefully followed the criteria set out in the Indian Gaming Regulatory Act. However, the people who made the final decision did not.

Finally, if I may reiterate these points which we were able to obtain. (Loretta, they were taken from a telephone conversation, therefore repetitious and redundant.)

1. Staff was disappointed;
2. Decision makers did not fully consider Section 20 IGRA;
3. Staff disagreed with decision;
4. No real evidence;
5. St. Croix waterway question could easily be addressed (We were not given an opportunity to do so.);
6. Staff didn't want to set national precedent of a tribe rejecting another tribe's application;
7. Staff didn't want to set a national precedent of a community rejecting a tribe's application - 6 and 7 would have to be detrimental;
8. Decision makers were worried about being second guessed by the Governor;
9. What is the part of best 20, IGRA if not to helped "remote" tribes?;
10. Political, not factual decision, and
11. Staff could not find anything detrimental to the nearby communities or tribes.

EOP 069074

Chairman ACKLEY. Yes.

Mr. BENNETT. And then I will show you a document you may or may not have seen, exhibit 332, if we could have that on the screen here in the hearing room. That is a memorandum for Ms. Avent that we received from the Executive Office of the President pursuant to a subpoena issued by the committee.

If you would take a minute to look at that, Chairman Ackley, have you seen that document before, sir?

[Exhibit 332 follows:]

August 17, 1995

URGENT---URGENT---URGENT---URGENT

MEMORANDUM FOR LORETTA T. AVENT

FROM: Ahsha Ali Safai

RE: Hudson

Dwayne Derrickson called and expressed deep concern for the issue his tribe faces on behalf of Chairman Arlyn Ackley. The Chairman is looking for a response to their issue. Chairman Ackley is hoping you will be able to provide some guidance within the next few days because of the fact that he is planned to face his tribal council as well as his tribal community and is expected to have some answers regarding the Hudson case.

Dwayne talked about the importance of this issue being brought to closure. He used the words, "If this issue can't be resolved, then we will have to go to the press, courts, or to the opposition!".

They will be in town next week and were hoping to meet with you. I told them that I expected you to be on travel, but for them to check back with me late today or tomorrow.

Dwayne said that Chairman Ackley hardly asks for help, but in this case they are hoping that you will be able to provide them with some answers. Please advise.

EOP 069075

EXHIBIT

332

Chairman ACKLEY. No.

Mr. BENNETT. Essentially it notes her trying to address the concerns which you have raised in August.

Chairman ACKLEY. Right.

Mr. BENNETT. Let me ask you this, Mr. Ackley: Ultimately you had further interaction, didn't you, in terms of talking or meeting with Mr. George Skibine, the director of the Indian Gaming Management Office, who in fact is going to testify before this committee tomorrow morning? Were you at a meeting which he attended in December 1996?

Chairman ACKLEY. Yes.

Mr. BENNETT. At that point in time, did Mr. Skibine offer any explanation as to why, with no notice to your tribes, with no indication of any defect in the application, suddenly at the last minute on July 14, 1995, the applications of all three tribes were rejected? Did Mr. Skibine indicate to you any explanation of that?

Chairman ACKLEY. The explanation was it was out of his hands, it was people above him. It got too political for him to be involved with anymore.

Mr. BENNETT. Specifically in terms of "it got too political for him to be involved," what did Mr. Skibine say with respect to political influence in Washington affecting this decision?

Chairman ACKLEY. I think what he was telling me is it was coming out of John Duffy's office, because that is where he came from when he came back to talk with me.

Mr. BENNETT. Did Mr. Skibine make direct reference to political pressure?

Chairman ACKLEY. Oh, yes.

Mr. BENNETT. No further questions, Mr. Chairman.

Mr. BURTON. Thank you.

Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman.

I appreciate the three of you being here. I was the chairman, when the Democrats were in control of Congress, of a subcommittee on health and environment, so I have a lot of personal knowledge about Indian affairs when it comes to health issues. I was the primary author of the Indian Health Improvement Act, the sponsor of the law on alcohol and drug abuse issues with respect to the Indian tribes, as well as environmental issues that gave tribal sovereignty clear recognition.

When I was the chairman of a subcommittee, we didn't issue subpoenas. We always asked people if they would come.

Chairman ACKLEY. Right.

Mr. WAXMAN. Only when they said they wouldn't come would we compel them to come with a subpoena. So I can understand, Chairman Ackley, your concern at having gotten a subpoena served upon you.

I also want to say that Mr. Bennett raised some personal issues about you. I don't see what relevance they have to anything we are discussing today. I don't know why it was even brought up.

While I share your concerns about the situation with your tribes and how you would be economically benefited if you would have been allowed to have your application approved for a casino, I do want to raise the question that you were not trying to build a Las

Vegas style casino on your reservation. You were trying to do this some 80 to 200 miles away in a small Wisconsin community that evidently did not want that casino in their midst, because this is an off-reservation project, not an on-reservation project, and your economic interests needed to be balanced against the views of the local community.

I have a map over there that I want to draw your attention to. This map shows Hudson, WI, in the western part of the State, and I think it also shows the potential economic value of the Hudson site. As you can see, Hudson is very close to a major metropolitan area, Minneapolis. As I understand it, if the dog track in Hudson were converted to a casino, it would be very valuable property because it would be so close to Minneapolis; isn't that right? Isn't one of the appeals of the location that it would draw people from Minneapolis?

[The map referred to follows:]

Hudson Dog Track: Interested Parties

Chairman ACKLEY. Sure.

Mr. WAXMAN. The map also shows where you are located. I think it makes the point that your tribes are not near the proposed gambling site. Chairman Gaiashkibos, I believe your tribe is the closest of the three. As I understand it, your tribe is located over 80 miles away; is that accurate?

Chairman GAIASHKIBOS. That's correct, Congressman, with the exception that we do have some trust land that is probably about 40 miles away from there also, as well. But the main reservation is 80 miles away, correct.

Mr. WAXMAN. Chairman Ackley and Chairman Newago, I understand that your tribes are located much further away. In fact, Chairman Ackley, I understand your tribe is nearly 200 miles away; is that accurate?

Chairman ACKLEY. Yes.

Mr. WAXMAN. Chairman Newago.

Chairman NEWAGO. 185 miles.

Mr. WAXMAN. Now, off-reservation gambling is different than on-reservation gambling, and it poses a lot of issues not present when you have an on-the-reservation gambling proposal.

First, you get local opposition. If the Department of the Interior approves the application for off-reservation gambling, it must take the land into a Federal trust. In other words, this means that the local people no longer have control over that land anymore. It is now Federal land, as if it were a reservation, and the Federal Government decides all the issues for that instead of that community deciding what they would permit. In other words, the Federal Government can force a casino on a community that didn't want a casino by saying, "It is no longer under your control, it is under the Federal Government's control." A lot of people in Hudson didn't like that.

You knew about that, Chairman Ackley, didn't you?

Chairman ACKLEY. I view it a little bit different. The process could be explained that easy, but there has to be a lot of concurrence with the Governor, and there is opportunity for the Chippewa Nations to get some of their land back. My grandfather signed a treaty in Prairie du Chien, about 100 miles south of that area.

We recently participated in the Mole Lake's decision in the State of Minnesota, six Chippewa tribes in Wisconsin, to exercise an off-reservation site for fishing rights. So that map does a little justice, but it doesn't include that in the State of Michigan that the Chippewa Nations can freely go within the State boundaries and exercise hunting and fishing rights.

So we are a little different, when it comes to other tribes, when it comes to the perspective we feel we are comfortable with. We are not a conquered people, and we freely go to the other reservations and practice our religion and feel comfortable doing so.

Mr. WAXMAN. So you disagree with the idea that there ought to be consideration for what the local population might think because your tribe once occupied that territory, and therefore you have a right to locate a casino if you wish it? Would that be your view?

Chairman ACKLEY. No. I participated with the local politicians in looking at a service agreement for services that were going to place the land in trust to offset the loss of the taxes relating to the dog

track. That was part of the Indian Gaming Act, looking at self-sufficiency and allowing us to communicate with other units of government.

Mr. WAXMAN. Whenever you get an off-reservation site, you get a lot of concerns from the local people, but also concern by other tribes with gambling because it is competition for gambling that may be taking place on a reservation nearby. So sometimes one Indian tribe will object to an off site situation for gambling because they have got their own on-reservation gambling.

In fact, this problem also confronted your proposal. The map shows that the St. Croix Tribe is much closer to Hudson than any of the other three tribes, as you can see on that map. This tribe opposed the project, and in fact they paid for a lobbying campaign against it because they feared that competition would——

Chairman NEWAGO. Congressman, if I might point out, the St. Croix Tribe's facility in Turtle Lake, WI, is the off-reservation site that started out with an application process as a Class II gaming facility in which they were going to have bingo, and miraculously it turned into a Class III facility as the process moved forward, without consultation to my colleague Gaiashkibos, chairman of the tribe located near that site.

Mr. WAXMAN. So you fear that their fear of competition was for their off-reservation site, not——

Chairman NEWAGO. That's correct. The criteria we were to meet with respect to the 50-mile radius that the Bureau had imposed as part of the application process encompassed the Turtle Lake site, which is an off-reservation site. That land is put in trust.

Mr. WAXMAN. Whether it is an on-reservation site or off-reservation site, what you have is somebody who has gambling going and somebody new wants to come in and compete, and sometimes people that have the clear avenue for customers don't want to share their customers.

Now, Chairman Gaiashkibos, I understand you have been on both sides of this issue. In this case you are supporting the off-reservation gambling, but isn't it true that in 1992 you opposed an off-reservation gambling proposal by the St. Croix Tribe for many of the same reasons that I just described?

Chairman GAIASHKIBOS. I have no recollection of opposing anything in St. Croix. I do know that St. Croix, many of our members are intermarried with St. Croix members. In fact, we have St. Croix members residing on our reservation. The only thing that I ever pointed out to St. Croix, when they opposed this, Lac Courte Oreilles never went on record opposing them when they placed the Turtle Lake site into trust.

Mr. WAXMAN. I have a copy of an August 18, 1992, letter you wrote to Governor Tommy Thompson of Wisconsin. In this letter you write that your tribe adamantly opposes an off-reservation gaming facility that the St. Croix Tribe proposed at Spooner, WI. And according to this letter, you opposed this facility for two reasons.

First, you said, and I quote, "The Spooner gaming facility is located too far from the St. Croix Reservation to have any beneficial impact on the tribal community." And second, you were worried

about the effect on your tribe's gaming facilities because you thought the region was becoming saturated.

I will just quote from the letter.

> In reviewing the 1988 Indian Gaming Regulatory Act and our Lac Courte Oreilles - State of Wisconsin compact, along with the recommendations of the State of Wisconsin Task Force on Gaming, Lac Courte Oreilles should be protected by the 50-mile radius of which Spooner falls within. Lac Courte Oreilles feels strongly that you as Governor of Wisconsin, should protect Lac Courte Oreilles . . . from this clear case of saturation.

Now, isn't it true that your proposal for a gaming facility in Hudson was similar in important respects to the Spooner proposal, except the roles were reversed? In the Hudson case you were trying to site a gaming facility within 50 miles of the St. Croix Tribe, and then vice versa? What do you say?

[The letter referred to follows:]

ATTACHMENT

LAC COURTE OREILLES TRIBAL GOVERNING BOARD

Pride Of the Ojibwa
Route 2 • Box 2700
Hayward, Wisconsin 54843
(715) 634-8934 • FAX (715) 634-4797

August 12, 1992

The Honorable Tommy G. Thompson
Governor of Wisconsin
State Capitol
Room 115 East
P.O. Box 7863
Madison, WI 53707

Dear Governor Thompson:

Please be advised that the Lac Courte Oreilles Band of Lake Superior Chippewa Indians adamantly opposes the St. Croix Tribe's proposed gaming facility at Spooner, Wisconsin.

Lac Courte Oreilles feels that approval of this St. Croix - Spooner gaming facility is fundamentally not in the best interests of the Wisconsin Chippewa Tribes for two reasons: (1) The number of gaming facilities for St. Croix have reached a saturation point, and (2) the Spooner gaming facility is located too far from the St. Croix Reservation to have any beneficial impact upon the tribal community. The only benefit for anyone will be for Spooner, by dumping a financial trojan horse upon the St. Croix Tribe.

In reviewing the 1988 Indian Gaming Regulatory Act and our Lac Courte Oreilles - State of Wisconsin Compact, along with recommendations of the State of Wisconsin Task Force on gaming, Lac Courte Oreilles should be protected by the fifty (50) mile radius of which Spooner falls within. Lac Courte Oreilles feels strongly that you, as Governor of Wisconsin, should protect Lac Courte Oreilles, the St. Croix Tribe, and all Wisconsin Tribes from this clear case of saturation.

As you are already aware, the St. Croix Tribe has other gaming facilities closely located near the proposed Spooner facility. In fact, the St. Croix - Hertel gaming facility is a mere fourteen (14) miles from Spooner, Wisconsin. Also, the St. Croix - Turtle Lake gaming facility is only thirty (30) miles from Spooner. Further, the St. Croix - Danbury gaming facility is thirty-eight (38) miles from Spooner. Lac Courte Oreilles wishes the St. Croix

Tribe much success on providing greater economic opportunities for their people, but not at the expense of the Lac Courte Oreilles People.

These few facts speak for themselves. Here is a clear case of over-saturation! This certainly could create Inter-Tribal disputes about the small source of gaming revenue for both tribes and conflict over boundary disputes.

The Lac Courte Oreilles Tribe entrusts this appeal to you based upon your governorship wisdom and commitment as stated in our Compact. Lac Courte Oreilles will suffer from this heavy saturation, not only in terms of economic well-being, but also in tribal relations with our neighbors, the St. Croix Tribe.

Thank you for your commitment to preserving and planning a prosperous tribal economic venture for all Wisconsin Tribes.

Sincerely,

Gashkibos, Chairman
Lac Courte Oreilles Tribal Government

G:ly-

cc: Tribal Governing Board
Ms. Sue Aasen, LCO Legal Dept.
Mr. Larry Leventhal, LCO Legal
Grand Casinos, Inc.
File

Chairman GAIASHKIBOS. I believe at that time, and I don't have a copy of that letter here to see that, but——

Mr. WAXMAN. You do have a copy right in front of you.

Chairman GAIASHKIBOS. Congressman, the older I get, the more blurred these faxes get, with all due respect. But yes, I did write this letter. I believe that at this same time St. Croix already impacted us with the Turtle Lake site, because they were drawing the same customers. They were busing customers up from Eau Claire, Chippewa Falls, and some of the other southern small towns and villages. What they wanted to do was basically cut us off, because Spooner was on the opposite side of Turtle Lake, so that would virtually dry up that market. So that is correct, I did do that.

Mr. WAXMAN. My point essentially is this: When you get off-reservation gaming sites it poses a very different issue than on-reservation gaming sites. I think your letter makes a very good point where these off-reservation cases need to be carefully scrutinized and why they often, in some cases, anyway, should not be approved.

As I studied the Hudson issues, I have learned that one of the misconceptions many people have is that this issue is really about and between two groups of tribes. In fact, it is a lot more complex. It is probably more a battle between Mr. Havenick, the Florida gambling person who owns the dog track, and the community of Hudson, than it was a battle between the tribes. Who first had the idea to turn the Hudson Dog Track into a Las Vegas style casino? Mr. Havenick or you all?

Chairman NEWAGO. Congressman, if I could take a step back, in your earlier comments with respect to Chairman Gaiashkibos's position with regard to the proposed operation by St. Croix in Spooner, WI, I would like to note—and I don't have the documentation but I can get it and provide it—since that time, since the time of this application, two of the opponent tribes in the State of Wisconsin have since changed their opposition to support with respect to off-reservation sites. And I can provide that documentation. We do have the information.

Mr. WAXMAN. I appreciate that. I would like to see that.

Chairman NEWAGO. St. Croix is one of those tribes.

Mr. WAXMAN. We will put that in the record. I want to ask you a question, Chairman Newago. Did you have the idea of turning this dog track owned by Mr. Havenick into a Las Vegas casino, or did he have the idea to approach you?

Chairman NEWAGO. I did not have the idea. I believe that originally, yes, there was an opportunity that presented itself, and Mr. Havenick, through Bill Cadotte, contacted the tribe.

Mr. WAXMAN. Mr. Havenick owned this dog track. He thought it was an opportunity to turn it into Las Vegas gambling. He owned the dog track and he planned the casino, and he thought it would be a good idea to include your tribes in the deal, and he approached you and you saw an economic benefit for your tribes. Is that a correct statement?

Chairman NEWAGO. For Red Cliff, yes, it was an opportunity to gain some economic benefit.

Mr. WAXMAN. Your side on this issue had a powerful lobbyist in Washington working on the matter. You had Paul Eckstein, who

was Secretary Babbitt's former law partner, working for you. You had Jim Moody, the former Congressman, lobbying for you. Who paid for these lobbyists? Did your tribes pay for it or did Mr. Havenick pay for it, for their services?

Chairman NEWAGO. I know that Red Cliff did not pay for any lobbyists.

Mr. WAXMAN. Mr. Ackley, did you pay or did Mr. Havenick pay for these lobbyist?

Chairman ACKLEY. We did not pay, no.

Chairman GAIASHKIBOS. I have no knowledge, Mr. Congressman. I left office in 1995, and just returned here in 1997, so I have no knowledge about these lobbyists. It happened after the letter was submitted by Michael Anderson.

Mr. WAXMAN. Well, you would have knowledge whether you paid for those lobbyist services. Did you pay for them?

Chairman GAIASHKIBOS. No, we didn't. Not to my knowledge.

Mr. WAXMAN. And you were involved in litigation. Who is funding the litigation you are now bringing against the Department of Interior, you or Mr. Havenick?

Chairman NEWAGO. From Red Cliff's respect, Mr. Havenick is financially supporting the litigation for Red Cliff.

Mr. WAXMAN. Mr. Havenick testified that he is funding these lawsuits. Do either of you disagree with that?

Chairman GAIASHKIBOS. Lac Courte Oreilles doesn't disagree with it. LCO is paying for our legal counsel. Mr. Leventhal, who is here with us, or with me right now, that's the attorney, the counsel that I'm paying for.

Chairman NEWAGO. I think one point, Congressman, that I want to make at this time with respect to the direction you're heading with this issue is that, you know, this whole issue certainly would have been brushed under the carpet had not I had a friend like Mr. Havenick to support me and truly take concern with respect to this issue and have the capital to be able to afford the litigation procedure.

Otherwise, I would have been sitting at home in Wisconsin, and nobody would have knew where George Newago was from or who he was, and I wouldn't be sitting before this committee. So I'm very appreciative of Mr. Havenick's financial ability.

Mr. WAXMAN. I'm not criticizing him in any way. He's a businessman. He saw an opportunity to make some money. He had a dog track that was losing a lot of money. He thought maybe he could rescue his investment by turning it into a Las Vegas casino. But he couldn't do it because the local people wouldn't allow it.

But there was a loophole. If he can get this declared Indian land, off-reservation Indian land, by the Department of Interior, then he could go on with this gambling operation. And he tried to take advantage of the fact that there are off-reservation gambling sites. They have to be approved. They have to be approved within the Department of Interior as well as at the local level.

Chairman NEWAGO. And we followed all those procedures and steps, sir.

Mr. WAXMAN. I understand that you feel you did and you're not happy with the result. But do any of you claim to be experts about

all the processes within the Department of Interior in evaluating these decisions?

Chairman ACKLEY. Experts. I would like to answer the question about——

Mr. WAXMAN. That's not your area, is it?

Chairman ACKLEY. No.

Mr. WAXMAN. Your area or your concern is, you wanted to have this gambling casino because it would have, as you saw it, benefited you, even though your tribes were far away.

Chairman NEWAGO. Congressman, the frustrating thing for me as an Indian leader is that here we've got——

Mr. WAXMAN. Wait, wait, wait. Just a minute. Let me finish my sentence, and then I'm going to let you say something. It's hard to imagine if people are 200 miles away they're necessarily going to get the jobs in those casinos. But, nevertheless, you had an economic relationship with Mr. Havenick. You would have benefited from it, and therefore you went with Mr. Havenick and submitted this application.

And I interrupted you. So, please, did you want to——

Chairman NEWAGO. No. Go ahead.

Mr. WAXMAN. OK. Now, those are the points that I want to make. And what we have is a half-hour on each side, and I have Members on the Democratic side who want to ask questions. So I'm going to recognize first Mr. Lantos for—well, I'm going to recognize him for 4 minutes.

Mr. LANTOS. I want to use my time with a reality check. We presumably are dealing with three Indian tribes, but in fact what we are dealing with are the machinations and shenanigans of a superrich Florida gambling mogul who owns a complex conglomerate of gambling enterprises in a number of States, including Florida, Texas, and Wisconsin.

This gambling mogul made a horrendously stupid decision. He put $40 million into a racetrack, a dog racetrack, which immediately started losing money. Every year since it opened, it lost millions and millions of dollars. The top amount was $7 million a year.

As a matter of fact, the enterprise, from an economic point of view, was so disastrous that the mogul requested that, for property tax purposes, this $40 million complex be valued at $2 million. Then they found a loophole, the Indian tribes.

And having read the whole document, I think it would have been criminal for the Department of the Interior to approve this project. And I tell you why. There is just one provision in this agreement which the tribes apparently were ready to sign for reasons that I find utterly incomprehensible.

Under the proposal, the casino was not going to hold the parking lot near the casino itself, it was going to lease the parking lot from the mogul. Now, the tribes had the right to gambling only until 1999, with a possible extension of 5 years. But the parking lot contract, noncancelable, ran for 25 years. So presumably the tribes agreed to pay about $1 million a year for 25 years even though the gambling operation could stop by 1999.

Now, if I had reviewed as a professional within the Department of the Interior this proposal, I would have turned it down so fast

that you couldn't say your name fast enough. Now, this is a standard operating procedure in——

Chairman NEWAGO. Congressman.

Mr. LANTOS. No. Please don't interrupt me. This is a standard operating procedure in such relationships. Let me read to you from the Inspector General's report which specifically examined lease payments made by six Wisconsin tribes for gaming machines.

Let me tell you what the Inspector General concludes. In 1992, these 6 tribes paid $28.7 million for machines that they could have purchased for $2.6 million. Now let me put this in sort of real terms that people relate to. This is like being able to buy an automobile for $20,000 but leasing it for a year for a quarter-million dollars. Well, you have to be out of your mind if you can buy a car for $20,000 to pay a single annual lease payment of a quarter-million. That's what these six tribes did. I'll give you the figures one more time.

My time is up?

I am convinced, having studied the record, that the decision to turn down this application on the parking lot scandal alone was the only rational decision that the Department of Interior professionals could have reached.

Mr. WAXMAN. Mr. Kanjorski, for 4 minutes.

Mr. KANJORSKI. Thank you, Mr. Chairman.

I'm going to follow along with what Mr. Lantos said, but I want to ask you, gentlemen, were you represented by counsel or professionals when you engaged in these transactions? Yes or no.

Chairman GAIASHKIBOS. Yes. But I would like to address Mr. Congressman Lantos'——

Mr. KANJORSKI. This is my time. You were represented.

Are those representatives of you here today that negotiated this deal for these three tribes?

Chairman GAIASHKIBOS. Yes. And it's a fine agreement.

Mr. KANJORSKI. What was that?

Chairman GAIASHKIBOS. Yes. And it's a fine agreement. And I would like it to——

Mr. KANJORSKI. It is a fine agreement.

Chairman GAIASHKIBOS [continuing]. Take exception to Congressman Lantos.

Mr. KANJORSKI. Well, you're not going to answer him; you're going to answer me. You think it's worthwhile to pay a rental fee of $1 million a year for a piece of land. If you look at the picture over there, I don't think that land can park 800 to 1,000 cars, that the purpose of that land itself at that rate, at 10 percent return on your investment, would set the value of that parking lot alone at $10 million.

Chairman GAIASHKIBOS. If you're not going to let me respond——

Mr. KANJORSKI. Then you continue to make that commitment and put your tribes at risk for 25 years even though you have no certainty and the State at any time can discontinue within 4 years the license if it had been granted. Do you think that is a reasonable agreement to enter into in a fiduciary capacity representing you and three tribes?

Chairman NEWAGO. The partnership was all-encompassing. We were partners with respect to the parking lot agreement as well. There was four partners involved in this entire negotiation.

Mr. KANJORSKI. Now, wait a second. As I understand, the lease was made with this gambling interest from Florida that opened this lot.

Chairman NEWAGO. No.

Mr. KANJORSKI. Who owned it then?

Chairman ACKLEY. We did.

Chairman NEWAGO. The partnership.

Mr. KANJORSKI. What partnership?

Chairman NEWAGO. Four Feathers.

Mr. KANJORSKI. Four Feathers was purchasing the parking lot?

Chairman GAIASHKIBOS. The whole thing.

Mr. KANJORSKI. I understand now, gentleman, from what I understand in the briefing that I've received, that for $39 million, Four Feathers was purchasing a part of this raceway, not including the dog portion and not including the parking lot. The parking lot was an additional rental that was going to reside with the original owners for $1 million to Four Feathers.

Chairman ACKLEY. That's wrong.

Chairman GAIASHKIBOS. That's wrong.

Mr. KANJORSKI. Well, what is the deal?

Chairman GAIASHKIBOS. And it's not criminal and it's not a scandal. The way the trust property works, you cannot mortgage a piece of trust property, Mr. Congressman. What we did was, we transferred—we transferred all of the mortgage over on to a piece of property, and that is the parking lot, that the bank at the day of execution was going to be transferred to the parking lot, and all of that mortgage was to be placed on that parking lot. Otherwise, we would have no access into the casino.

Mr. KANJORSKI. Why did you buy the entire parcel—just buy the entire parcel?

Chairman GAIASHKIBOS. We didn't have the proceeds to do that. We had to keep——

Mr. KANJORSKI. What investment were you making in this? You mean the tribe was now coming up with equity, where you had money, tribal money?

Chairman GAIASHKIBOS. No. We didn't have equity.

Mr. KANJORSKI. Who was putting the money in this deal?

Chairman GAIASHKIBOS. All of us, as a partner, once the money was generated.

Mr. KANJORSKI. Now, wait. There is no money. Somebody is going to front the money for Four Feathers. Did your tribes put that money up? Did you put any money into this deal?

Chairman GAIASHKIBOS. It was already built. It was already there.

Mr. KANJORSKI. You're making the purchase, aren't you? Who's paying for the purchase to the original owners of that property? Four Feathers; is that correct?

Chairman ACKLEY. The purchase was $1.

Mr. KANJORSKI. I just want to go on record. I've looked over the facts, too. I think Mr. Lantos is absolutely correct. And all I can say is, if this represents what this opportunity for gaming to the

Indian tribes of this Nation is going to come down to, that a fast-track operator from Florida can come up and pick a strawman up to work a deal, it's incredible. The Congress of the United States and this committee ought to be spending its time going around finding out how many more rip-offs in this country have occurred.

Mr. WAXMAN. Mr. Barrett, I want to yield to you the rest of our time.

Mr. BARRETT. Thank you. I appreciate that. I come from a unique perspective.

Mr. BURTON. I do not want to take time away from the minority. You certainly will get the remainder of your time. But I think it's only fair for the tribal leaders to respond to this series of questions.

Mr. WAXMAN. Point of order.

Mr. BURTON. I'm going to allow them to respond briefly, and then you will be able to continue your time.

Mr. WAXMAN. Can we have our time added to?

Mr. BURTON. There will be no time taken away from your questioning. Go ahead.

Mr. BARRETT. How much time will he be given, Mr. Chairman?

Mr. BURTON. We'll give them 4 minutes. But we'll give you the remaining time.

Mr. FATTAH. Mr. Chairman.

Mr. BURTON. You may respond.

Chairman ACKLEY. Mr. Chairman, I don't really appreciate looking at the contracts that we as tribal leaders have worked out. I do take some offense that the Congressmen who are sitting here today could help us by recovering the funds that have been mismanaged by the Bureau of Indian Affairs for the lands that we sold the U.S. Government.

So we've made some bad deals before in our time by signing treaties with the United States and ceased—selling over 20 million acres of land to the U.S. Government and never receiving full payment for those lands that we sold. So there's a lot of bad deals going on in the Congress, not only from the tribal perspective.

But what I would like to say is that the contract that you referred to needs approval from the National Indian Gaming Commission. We were negotiating with that organization to try to work those things out similar to the application process with the Bureau of Indian Affairs. We weren't done yet. What you—you can say, do whatever you want to or how you interpret that, but if you're going to make comments to us without a response, well, then you can have it your way. But I understand what's happening here today.

I would just like to make those remarks a little bit, what my ancestors have looked like when it comes to signing the treaties with the United States. And there's been a lot of mismanagement of the Bureau of Funds, and we would like to get our money back. And I don't know how the Congress plans on settling that, but we're still waiting for some kind of answer.

Thank you.

Chairman GAIASHKIBOS. Yes, Chairman Burton. I just want to make a comment to Congressman Waxman. Early in his remarks, I never had a chance to respond that, you know, he's portraying this as, the city and the county didn't want this, this project. That might be the case right now in 1998, but you have to take a look

at the frame of—at the time when this application was submitted. Just like Members of Congress, if you won by a 51½ percent margin to get sent to Congress, you're going to be sitting here. If you lost by a 48½ percent of margin, you're going to be out there. And that vote was a binding vote. We entered into a service agreement that is a binding contract with the city of Hudson and the county of—and St. Croix and Troy.

Mr. WAXMAN. Let me interrupt you by saying that vote wasn't on your proposal at all. It was on the St. Croix proposal when Mr. Havenick had St. Croix as his partner. And the people approved that in Hudson by a narrow margin, although Troy voted on it as well and voted it down. But there was not a vote on your proposal as such; isn't that correct?

Chairman GAIASHKIBOS. Partially. It was not a vote for St. Croix. It was an Indian tribe.

Mr. WAXMAN. But it was a different proposal than your proposal.

Chairman GAIASHKIBOS. But it was at an Indian tribe casino.

Mr. WAXMAN. And does the vote decide the issue, or does the Department of Interior still have jurisdiction over it?

Chairman GAIASHKIBOS. If they follow the standards, the Department of Interior, Mr. Congressman.

Mr. BURTON. Have you concluded your remarks?

Mr. Waxman, you have the remainder of the time. I think you have 4 minutes remaining.

Mr. WAXMAN. I yield to Mr. Barrett.

Mr. BARRETT. Thank you. I appreciate that.

I come from the State of Wisconsin, and, in fact, I wrote a letter in opposition to expanding this dog track to include Las Vegas style gambling. I opposed that expansion just as I opposed dog track betting when I was in the State legislature, just as I oppose casino gambling and just as I opposed the expansion within my own district of a bingo hall to include casino gambling.

But that's not the issue here. And I am sympathetic to all three of you. Frankly, if I were in your shoes and someone came to me and offered me a deal where I could make money for the people that I represent and wouldn't have to put any money up front, it would look very attractive if I was representing poor people, as all three of you do.

So I am not here to disparage any of you. I think that, in the position that you hold, that you were trying to do what was best for the people that you represent.

But there's more here than just that, and I think all of us recognize that. And I think when we look at this issue, it is important to see what the people in the State of Wisconsin want and what the position was and what the impact would have been on the surrounding community. And that's something that we haven't spent a lot of time on, and I do think that that's important.

And let's start with the Governor of the State of Wisconsin. The Governor of the State of Wisconsin was quoted as saying, I don't know of any reason whatsoever—he said in referring to this—to permit this; I don't know of anybody who wants it. His spokesman—and this was in October 1994—said that he—quote, "He's completely shut the door." So the Governor of the State of Wisconsin stated publicly several times, in addition, in a letter dated June

9, 1995, my position continues to be clear: I do not support an expansion of Indian gaming in Wisconsin.

No one accuses Governor Tommy Thompson of being in bed with the Democratic National Committee. So I would say that he's coming to this issue from a different perspective. And he was strongly opposed to it. But it's not even the Governor, because one could make the argument that the Governor is speaking for a political—that he really doesn't speak for the people.

The best way to check what the people want is to ask the people themselves. And that's exactly what happened in the State of Wisconsin on April 6, 1993, when there was a constitutional amendment on our ballot that dealt with, not just the issue of gaming, but the issue of video poker, the issue of Lake Superior, Lake Michigan casino boats. And in each case, the people of the State of Wisconsin spoke, and they spoke quite loudly.

And the reason that this was on the ballot was the confusion that existed in the State of Wisconsin following the enactment in the 1980's of the lottery and the dog track when we got the decisions from the Federal Government that, once you started opening that door, you couldn't close that door when it came to Indian gaming. I think that all of us from Wisconsin are familiar with that.

Because of the concern of the proliferation of gambling, there were six questions put to the people of the State of Wisconsin, and I have looked at those, because I think they're instructive. I think they're instructive for the State, and I think they're instructive for this area, and two of them in particular.

Question No. 2: Do you favor a constitutional amendment that would restrict gambling casinos in the State? The entire State: Yes, 61 percent; no, 39 percent. The St. Croix County: Yes, 65 percent; no, 35 percent. That's a constitutional amendment—that wasn't. That was an advisory, but we get to the constitutional amendment.

Interestingly, because of all this talk about political influence, one of the strongest political groups in the State of Wisconsin is the Tavern League. And a hot issue at that time, as all of you know, was whether taverns should be allowed to have video poker and other businesses be allowed to have video poker. So that question was on the ballot: Do you favor a law that would allow video poker and other forms of video gambling in the State? Entire State: Yes, 34; no, 66. St. Croix County: Yes, 34 percent; no, 66 percent.

The reason I use those two is because I think underlying this, a concern that I have, I don't want this to be an issue about anti-Indian. That, to me, is an invalid reason totally for any opposition to this.

I found it very interesting that there is actually greater opposition to video poker in the State of Wisconsin, something that the Tavern League wants, than to Indian gaming. Again, both overwhelmingly rejected in this area.

But what that goes to is the vast opposition in this area. Politician after politician came out against this. Now there may be reasons that—different reasons for people doing it. I, as I stated, am against gambling. But the point is, in this discussion, I think we're making a huge mistake if we ignore for one reason—I'll conclude very briefly.

If the Federal Government had approved this, you would have had Republican after Republican and Democrat after Democrat howling to the Moon about how unresponsive the Federal Government was on this issue, because they were all against it. But here's an instance where the Federal Government went along with the community desires.

And I yield back the balance of my time.

Mr. BURTON. The gentleman's time has expired.

For the Members, we will go till 1 o'clock, and then we'll break for about 45 minutes so everyone can have some lunch.

Did you want to briefly respond?

Chairman GAIASHKIBOS. Yes, if I could, Mr. Chairman.

Mr. BURTON. OK. Briefly.

Chairman GAIASHKIBOS. First of all, I would just like to say that I find a real contradiction in your remarks, Congressman Barrett. First of all, the U.S. Congress passes IGRA. It outlines how Indian tribes can place land into trust and how we enter into a compact with our State, in this particular case, the State of Wisconsin, which we did. Tommy Thompson signed an agreement. It provides for additional site. The referendum that you're referring to is absolutely correct. However, under the current compact, the amendment doesn't cutoff a second site and the proposal that we're putting forth.

And also let me just say this: I might be naive in your politics out here, but let me assure you, I wouldn't have moved forward with this in my meetings with the Governor if he said, there's no chance in hell I'm going to sign this.

Mr. BARRETT. I'm reading from the June 9, 1995, letter. Quote: "My position continues to be clear. I do not support an expansion of Indian gaming in Wisconsin."

Mr. BURTON. The gentleman's time has expired.

Mr. BARRETT. Thank you, Mr. Chairman.

Mr. BURTON. Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman.

Mr. BURTON. Do you want to go next?

Mr. MICA. Yes.

Mr. BURTON. Mr. Mica.

Mr. MICA. Thank you.

Chairman Newago, you, I think, stated at some point that basically Congress had really set the stage for allowing Indians to gamble; is that correct?

Chairman NEWAGO. Yes, that's correct.

Mr. MICA. And I guess that was the law passed in 1988, which I've got a copy of that. I guess it was Indian gaming legislation introduced by Mr. Udall and I think some members of this panel like Mr. Waxman and Mr. Lantos and Mr. Kanjorski. I think even Mr. Burton voted for that legislation. So those are the individuals that set basically the law and parameters by which Indians could undertake certain types of gambling and betting on the reservations. Is that correct?

Chairman NEWAGO. Yes.

Mr. MICA. Mr. Chairman, I would like to have this made a part of the record, if I can. This is the—those Members of Congress who supported that legislation.

Mr. BURTON. Without objection.

[The information referred to follows:]

House Votes 351, 352, 353, 354, 355, 356, 357, 358

351. S 555. Indian Gaming/Passage. Udall, D-Ariz., motion to suspend the rules and pass the bill (thus clearing the measure for the president) to create a National Indian Gaming Commission to oversee and monitor high-stakes bingo and certain other gambling on Indian reservations, and to prohibit casino gambling and parimutuel betting on reservations unless a tribe enters into a compact with the state for operation of such activities. Motion agreed to 323-84: R 124-42; D 199-42 (ND 129-39, SD 70-3), Sept. 27, 1988. A two-thirds majority of those present and voting (272 in this case) is required for passage under suspension of the rules.

352. HR 4418. National Science Foundation Authorization/Compromise Agreement. Roe, D-N.J., motion to suspend the rules and adopt the resolution (H Res 547) to concur in Senate amendments with an amendment. The vote in effect reflected House agreement to a compromise on the National Science Foundation authorization for fiscal 1989-93. The bill would authorize $2.05 billion for fiscal 1989. Motion agreed to 402-2: R 163-1; D 239-1 (ND 166-1, SD 73-0), Sept. 27, 1988. A two-thirds majority of those present and voting (270 in this case) is required for passage under suspension of the rules.

353. HR 5337. Sanctions Against Iraq/Passage. Fascell, D-Fla., motion to suspend the rules and pass the bill to impose sanctions against Iraq to protest its reported use of chemical weapons against the Kurdish population. Motion agreed to 388-16: R 155-8; D 233-8 (ND 162-6, SD 71-2), Sept. 27, 1988. A two-thirds majority of those present and voting (270 in this case) is required for passage under suspension of the rules.

354. HR 387. Equitable Pay Practices/Rule. Adoption of the rule (H Res 537) to provide for House floor consideration of the bill to establish a commission to study whether the current federal job classification and pay system are designed and administered in accordance with civil rights and fair labor laws. Adopted 297-101: R 63-99; D 234-2 (ND 165-0, SD 69-2), Sept. 27, 1988. A "nay" was a vote supporting the president's position.

355. HR 4264. Fiscal 1989 Defense Authorization/Committee Discharge. Moakley, D-Mass., motion to table (kill) the Walker, R-Pa., motion to discharge the Armed Services Committee from further consideration of the bill to authorize fiscal 1989 funding for the Department of Defense and nuclear-weapons programs run by the Department of Energy. The effect of Moakley's motion was to prevent an override vote on the president's veto. Motion agreed to 237-168: R 0-168; D 237-0 (ND 161-0, SD 76-0), Sept. 28, 1988.

356. HR 4637. Fiscal 1989 Foreign Aid Appropriations/Conference Report. Adoption of the conference report on the bill to appropriate $14,290,032,000 in fiscal 1989 for foreign aid programs, including U.S. contributions to international development banks, and for operations of the Export-Import Bank. The president requested $14,307,969,987. Adopted 327-92: R 116-55; D 211-37 (ND 148-20, SD 63-17), Sept. 28, 1988.

357. H Res 531. Ethics Committee Funds/Adoption. Adoption of the resolution to provide $550,000 from the contingent fund of the House for further expenses of investigations and studies by the Committee on Standards of Official Conduct. Adopted 412-2: R 166-0; D 246-2 (ND 169-0, SD 77-2), Sept. 28, 1988.

358. HR 387. Equitable Pay Practices/Commission Size. Armey, R-Texas, amendment to increase the size, from 11 to 16 members, of the commission charged with studying whether the federal job classification and pay system conforms with laws prohibiting discrimination by adding members recommended by the secretaries of defense, health and human services, the Treasury, agriculture and the interior. Rejected 159-257: R 151-18; D 8-239 (ND 2-164, SD 6-75), Sept. 28, 1988.

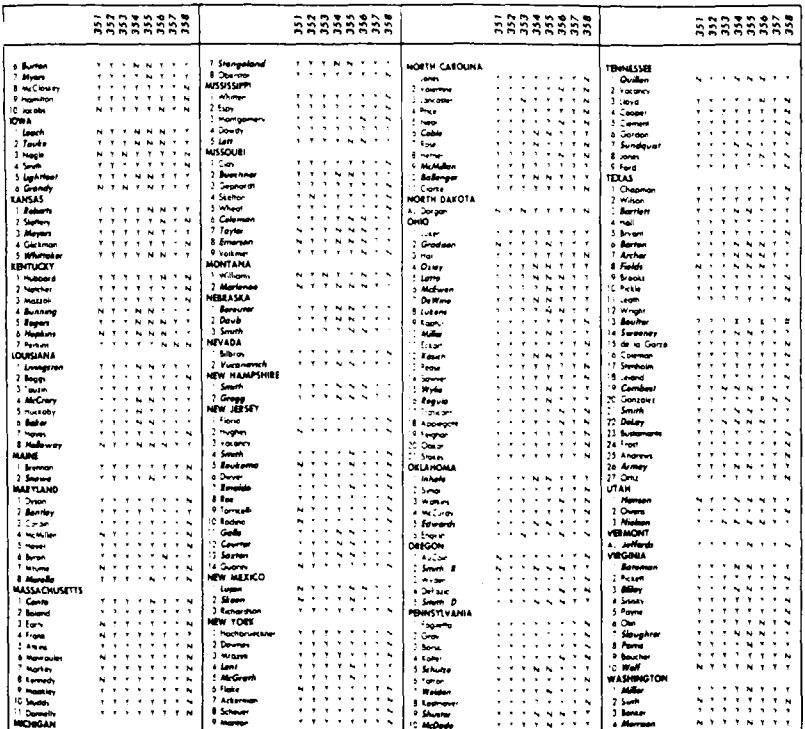
KEY

- Y Voted for (yea).
- # Paired for.
- \+ Announced for.
- N Voted against (nay).
- X Paired against.
- \- Announced against.
- P Voted "present."
- C Voted "present" to avoid possible conflict of interest.
- ? Did not vote or otherwise make a position known.

Democrats *Republicans*

	351	352	353	354	355	356	357	358
ALABAMA								
1 *Callahan*	-	+	+	-	-	+	+	+
2 *Dickinson*	Y	Y	Y	Y	N	N	Y	Y
3 Nichols	Y	Y	Y	Y	Y	N	Y	N
4 Bevill	Y	Y	Y	Y	Y	Y	Y	N
5 Flippo	?	?	?	?	Y	N	Y	N
6 Erdreich	Y	Y	Y	Y	Y	Y	Y	N
7 Harris	Y	Y	Y	Y	Y	Y	Y	N
ALASKA								
AL *Young*	Y	Y	Y	Y	N	Y	Y	Y
ARIZONA								
1 *Rhodes*	Y	Y	Y	N	N	Y	Y	Y
2 Udall	Y	Y	Y	Y	Y	Y	Y	N
3 *Stump*	N	N	N	N	N	N	Y	Y
4 *Kyl*	Y	Y	Y	N	N	Y	Y	Y
5 *Kolbe*	Y	Y	Y	N	N	Y	Y	Y
ARKANSAS								
1 Alexander	Y	Y	Y	Y	Y	Y	Y	N
2 Robinson	Y	Y	Y	Y	Y	Y	Y	N
3 *Hammerschmidt*	N	Y	Y	N	N	N	Y	Y
4 Anthony	?	?	?	#	Y	Y	Y	N
CALIFORNIA								
1 Bosco	Y	Y	Y	Y	Y	Y	Y	N
2 *Herger*	N	Y	Y	N	N	N	Y	Y
3 Matsui	Y	Y	Y	Y	Y	Y	Y	N
4 Fazio	Y	Y	Y	Y	Y	Y	Y	N
5 Pelosi	Y	Y	Y	Y	Y	Y	Y	N
6 Boxer	Y	Y	Y	Y	Y	Y	Y	N
7 Miller	Y	Y	Y	Y	Y	Y	Y	N
8 Dellums	N	Y	Y	Y	Y	Y	Y	N
9 Stark	N	Y	Y	Y	Y	Y	Y	N
10 Edwards	Y	Y	Y	Y	Y	Y	Y	N
11 Lantos	Y	Y	Y	Y	Y	Y	Y	N
12 *Konnyu*	Y	Y	Y	N	?	Y	Y	Y
13 Mineta	Y	Y	Y	Y	Y	Y	Y	N
14 *Shumway*	N	Y	Y	N	N	N	Y	Y
15 Coelho	Y	Y	Y	Y	Y	Y	Y	N
16 Panetta	Y	Y	Y	Y	Y	Y	Y	N
17 *Pashayan*	Y	Y	Y	Y	N	Y	Y	Y
18 Lehman	Y	Y	Y	Y	Y	Y	Y	N
19 *Lagomarsino*	N	Y	Y	Y	N	Y	Y	Y
20 *Thomas*	N	Y	Y	N	N	Y	Y	Y
21 *Gallegly*	Y	Y	Y	N	N	Y	Y	Y
22 *Moorhead*	N	Y	Y	N	N	N	Y	Y
23 Beilenson	Y	Y	Y	Y	Y	Y	Y	N
24 Waxman	Y	Y	Y	Y	Y	Y	Y	N
25 Roybal	Y	Y	Y	Y	Y	N	Y	N
26 Berman	Y	Y	Y	Y	Y	Y	Y	N
27 Levine	Y	Y	Y	Y	Y	Y	Y	N
28 Dixon	Y	Y	Y	Y	?	Y	Y	N
29 Hawkins	Y	Y	Y	Y	Y	Y	Y	N
30 Martinez	Y	Y	Y	Y	Y	Y	Y	N
31 Dymally	N	Y	Y	Y	Y	Y	Y	N
32 Anderson	Y	Y	Y	Y	Y	Y	Y	N
33 *Dreier*	N	Y	Y	N	N	N	Y	Y
34 Torres	Y	Y	Y	Y	Y	Y	Y	N
35 *Lewis*	Y	Y	Y	N	N	Y	Y	Y
36 Brown	N	Y	Y	Y	?	Y	Y	N
37 *McCandless*	?	?	?	?	?	?	?	?
38 *Dornan*	N	Y	Y	N	N	Y	Y	Y
39 *Dannemeyer*	N	Y	Y	N	N	N	Y	Y
40 *Badham*	Y	Y	Y	?	N	N	Y	Y
41 *Lowery*	Y	Y	Y	N	N	Y	Y	Y
42 *Lungren*	Y	Y	Y	N	N	Y	Y	Y
43 *Packard*	Y	Y	Y	N	N	Y	Y	Y
44 Bates	Y	Y	Y	Y	Y	Y	Y	N
45 *Hunter*	Y	Y	Y	N	N	Y	Y	Y
COLORADO								
1 Schroeder	Y	Y	Y	Y	Y	Y	Y	?
2 Skaggs	Y	Y	Y	Y	Y	Y	Y	N
3 Campbell	N	Y	Y	Y	Y	Y	Y	N
4 *Brown*	Y	Y	Y	N	N	N	Y	Y
5 *Hefley*	N	Y	Y	N	N	Y	Y	Y
6 *Schaefer*	N	Y	Y	Y	N	Y	Y	Y
CONNECTICUT								
1 Kennelly	N	Y	Y	Y	Y	Y	Y	N
2 Gejdenson	N	Y	Y	Y	Y	Y	Y	N
3 Morrison	N	Y	Y	Y	Y	Y	Y	N
4 *Shays*	N	Y	Y	Y	N	Y	Y	N
5 *Rowland*	Y	Y	Y	Y	N	Y	Y	N
6 *Johnson*	Y	Y	Y	Y	N	Y	Y	Y
DELAWARE								
AL Carper	Y	Y	Y	Y	?	Y	Y	N
FLORIDA								
1 Hutto	Y	Y	Y	Y	Y	Y	Y	Y
2 Grant	Y	Y	Y	Y	Y	Y	Y	N
3 Bennett	N	Y	Y	Y	Y	Y	Y	N
4 Chappell	Y	Y	Y	Y	Y	Y	Y	N
5 *McCollum*	Y	Y	Y	N	N	Y	Y	Y
6 MacKay	?	?	?	?	?	?	?	?
7 Gibbons	Y	Y	Y	Y	?	Y	Y	N
8 *Young*	Y	?	?	?	N	N	Y	Y
9 *Bilirakis*	Y	Y	Y	Y	N	N	Y	Y
10 *Ireland*	Y	Y	Y	N	N	N	Y	Y
11 Nelson	Y	Y	Y	Y	Y	Y	Y	N
12 *Lewis*	N	Y	Y	N	N	Y	Y	Y
13 *Mack*	?	?	?	?	?	?	?	?
14 Mica	N	Y	Y	?	?	Y	Y	N
15 *Shaw*	N	Y	Y	N	N	Y	Y	Y
16 Smith	Y	Y	Y	Y	Y	Y	Y	N
17 Lehman	Y	Y	Y	Y	Y	Y	Y	N
18 Pepper	?	?	?	?	?	Y	Y	N
19 Fascell	N	Y	Y	Y	Y	Y	Y	N
GEORGIA								
1 Thomas	Y	Y	Y	Y	Y	Y	Y	N
2 Hatcher	Y	Y	Y	Y	Y	Y	Y	N
3 Ray	Y	Y	Y	Y	Y	N	Y	N
4 *Swindall*	Y	Y	Y	N	N	N	Y	Y
5 Lewis	Y	Y	Y	Y	Y	Y	Y	N
6 *Gingrich*	Y	Y	Y	N	N	Y	Y	Y
7 Darden	Y	Y	Y	Y	Y	Y	Y	N
8 Rowland	Y	Y	Y	Y	Y	Y	Y	N
9 Jenkins	?	?	?	?	Y	N	Y	N
10 Barnard	?	?	?	?	Y	N	Y	N
HAWAII								
1 *Saiki*	Y	Y	Y	Y	N	Y	Y	N
2 Akaka	Y	Y	Y	Y	Y	Y	Y	N
IDAHO								
1 *Craig*	Y	Y	Y	N	N	N	Y	Y
2 Stallings	Y	Y	Y	Y	Y	N	Y	N
ILLINOIS								
1 Hayes	Y	Y	Y	Y	Y	Y	Y	N
2 Savage	Y	Y	Y	Y	?	N	Y	N
3 Russo	Y	Y	Y	Y	Y	N	Y	N
4 *Davis*	Y	Y	Y	Y	N	Y	Y	Y
5 Lipinski	Y	Y	Y	Y	Y	Y	Y	N
6 *Hyde*	Y	Y	Y	N	N	Y	Y	Y
7 Collins	Y	Y	Y	Y	Y	Y	Y	N
8 Rostenkowski	Y	Y	Y	Y	Y	Y	Y	N
9 Yates	N	Y	Y	Y	Y	Y	Y	N
10 *Porter*	Y	Y	Y	Y	N	Y	Y	Y
11 Annunzio	Y	Y	Y	Y	Y	Y	Y	N
12 *Crane*	Y	Y	Y	N	N	N	Y	Y
13 *Fawell*	Y	Y	Y	Y	N	N	Y	Y
14 *Hastert*	Y	Y	?	N	N	Y	Y	Y
15 *Madigan*	Y	Y	Y	N	?	?	?	?
16 *Martin*	Y	Y	Y	N	N	Y	Y	Y
17 Evans	N	Y	Y	Y	Y	Y	Y	N
18 *Michel*	N	Y	Y	Y	N	Y	Y	?
19 Bruce	Y	Y	Y	Y	Y	Y	Y	N
20 Durbin	Y	Y	Y	Y	Y	Y	Y	N
21 Costello	Y	Y	Y	Y	?	Y	Y	N
22 Gray	Y	Y	Y	Y	?	Y	Y	N
INDIANA								
1 Visclosky	Y	Y	Y	Y	Y	Y	Y	N
2 Sharp	N	Y	Y	Y	Y	Y	Y	N
3 *Hiler*	Y	Y	Y	Y	N	Y	Y	Y
4 *Coats*	N	Y	Y	Y	N	N	Y	Y
5 Jontz	N	Y	N	Y	Y	Y	Y	N

ND - Northern Democrats SD - Southern Democrats



Southern states: Ala., Ark., Fla., Ga., Ky., La., Miss., N.C., Okla., S.C., Tenn., Texas, Va.
Omitted votes are quorum calls, which CQ does not include in its vote charts.

Mr. MICA. So basically they—the Congress set up the law, and then rules were made. And I believe all of the chairmen of the tribes that are sitting here felt that they were abiding by the rules and regulations that were set up. Is that correct?

Chairman ACKLEY. Yes.

Chairman GAIASHKIBOS. Yes, that is correct.

Mr. MICA. And you weren't experts in how to proceed, but you hired expertise and engaged expertise; is that correct?

Chairman ACKLEY. Yes.

Chairman GAIASHKIBOS. That's correct.

Mr. MICA. And I guess the reason that you did this is, the per-capita income of your tribal members is about $6,000 or $7,000 a year; is that correct?

Chairman NEWAGO. For Red Cliff, yes.

Mr. MICA. And one of the competitors, I guess, who didn't want you to have this, this new gambling enterprise, was the—is it Shakopees?

Chairman ACKLEY. Yes.

Chairman NEWAGO. That's correct.

Mr. MICA. And their per-member income was around $390,000 per member? Is that somewhere in the range?

Chairman ACKLEY. That's where I heard. Anywhere up to $450,000.

Mr. MICA. And would that be some reason that they might oppose your gaining this ability to conduct this additional gambling on a gambling site? Is that correct?

Chairman ACKLEY. Yes.

Mr. MICA. Well, you tried to play the game pretty fair. What was your reaction when you found out that two people in the Secretary of Interior's Office who were driving decisions left the Department and got lucrative contracts with the tribes that fought you on this application? How did you feel then?

Chairmen, we can just go right down, if you would respond.

Chairman GAIASHKIBOS. Well, I felt really—you know, I felt slighted by this, that—as an elected tribal leader, that I was not consulted beforehand and that the—the special interest group and influence played a role in this process.

Mr. MICA. Mr. Ackley.

Chairman ACKLEY. I felt somewhat hurt, but I've also known that Mr. Duffy was in charge of the trust fund, too; that he, the Bureau of Indian Affairs, misappropriated; so it doesn't surprise me too much.

Mr. MICA. Chairman Newago.

Chairman NEWAGO. I think, as my colleagues have mentioned, I felt slighted. And I felt surprised in—and I felt victimized by this whole process.

Mr. MICA. And each of you testified that you had no indication that you—or had any reason from anyone in the Department to indicate that your application was going to be rejected; is that correct?

Chairman ACKLEY. Right.

Chairman GAIASHKIBOS. That's correct.

Chairman ACKLEY. Correct.

Mr. MICA. And I'm not sure if you know this, but under the Ethics in Government Act, what was done by Mr. Collier, Tom Collier, and John Duffy is prohibited except for one loophole, which there is an exception in the law that allows Federal employees to leave their Government job and immediately represent Native American tribes before their former agencies. Are you aware of that loophole?

Chairman ACKLEY. I wasn't made aware of that until today.

Chairman GAIASHKIBOS. No, I'm not aware of that.

Mr. MICA. Don't you feel that that should be a change? Do you think that that's right, for folks to step right out of Government and then into a position of conflict?

Chairman GAIASHKIBOS. Yes, I agree with that.

Chairman ACKLEY. Yes, I agree with that, too.

Chairman NEWAGO. Uh-huh.

Mr. MICA. So this isn't all being driven by some Florida mongol who is trying to make a huge amount of profit.

Chairman ACKLEY. I felt that it was. It all depends from what State you came from. If you come from Connecticut, it's OK. But if you come from Wisconsin, Minnesota can get involved in your politics. That's how I felt.

Mr. BURTON. The gentleman's time has expired.

Is the mongol in the room? I think he meant mogul.

Mr. MICA. Mogul.

Mr. BURTON. Who's next on your side? Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman.

Maybe I could followup on that point, because I think one of the issues here that we talked about—Mr. Ackley, you just referred to Connecticut. Connecticut was a situation where the land was contiguous to the trust land; is that correct?

Chairman ACKLEY. I don't believe so.

Mr. BARRETT. I believe so. I believe so. We can check on that. And you would agree, wouldn't you, that there is a difference between these applications when the land is contiguous to the land that's in trust and when it is, say, 200 miles from the reservation land?

Chairman ACKLEY. Yeah, but there was a lot of local people objecting to the casino being developed there.

Mr. BARRETT. But the test, the legal test that the Department undertakes, my understanding, is a difference. But, again, I think that there is a—there's a difference here between the two. And I want to get back, because I think Mr.—I'm sorry if I mispronounce your name.

Chairman GAIASHKIBOS. Gaiashkibos.

Mr. BARRETT. You stated that in the preparation for this, that you hired some accountants; is that correct? Or someone to do a feasible study; is that correct?

Chairman ACKLEY. Arthur Andersen.

Chairman GAIASHKIBOS. An economist, Dr. Murphy.

Mr. BARRETT. Is that someone that the tribe hired, or is that someone that someone else hired? Who hired that person?

Chairman GAIASHKIBOS. The partnership hired.

Mr. BARRETT. OK. So that was—none of the tribe put up that money for that; is that correct?

Chairman GAIASHKIBOS. Well, if you read the partnership, the way this is going—there is operational costs that were going to be deducted from the actual, you know, once the casinos operate——

Mr. BARRETT. I understand that.

Chairman GAIASHKIBOS. Right.

Mr. BARRETT. But your tribe never wrote any check to Arthur Andersen.

Chairman GAIASHKIBOS. I don't believe so.

Mr. BARRETT. Mr. Ackley.

Chairman ACKLEY. No. But, Mr. Barrett, my tribe and I personally have looked at the Kaukauna Dog Track in the eastern part of the State to look at acquiring that site for a casino conversion dog track, also. So Hudson is not just something that came to me in a whim in the middle of the night.

Mr. BARRETT. Believe me, that was crucial in my desire to write a letter, because we have five dog tracks in the State of Wisconsin, most, if not all, having financial problems. And I think that the scenario that could be seen in the State of Wisconsin is that five dog tracks that had promised the Moon and were failing would now all want to become Las Vegas style casinos.

So even though my district is not contiguous or even within 100 miles or 200 miles of this location, the scenario that I think some of us had was, OK, here's the first one; then we go to the second one, the third one, the fourth one, the fifth one.

And again, as Mr. Waxman pointed out, you have a situation here where there is a loophole that exists. And it's there to protect and encourage economic development for the Indians. But I think that there comes a point when the wishes of the people in the State of Wisconsin also come into play. And that's something that I want to make reference to Representative Gunderson's letter, because he was the Congressman from this area.

And he states in his letter, dated April 24, 1995: The proposed casino dog track in Hudson is nothing more than an attempt to save a failing pre-existing greyhound track. The non-Indian track owners see Indian gaming as a potential source of revenue for themselves. He also goes on to talk about this being essentially a precedent setting case; and I think all of us would agree with that.

This is an unusual case. Wouldn't you agree with that, that this is an unusual case?

Chairman GAIASHKIBOS. First ever, yes.

Mr. BARRETT. First ever. No precedent whatsoever, nothing to draw on, because this is the first time that we've attempted to push the envelope this far.

So, again, I understand your frustration, but when we start talking about other decisions that were made involving Indian gaming, they really are comparing apples to oranges, because this is such a different type of application. And, again, I think that that's something that has to be said for the record. This was not a run-of-the-mill application.

And I fully agree with what you have said that, yes, opposing tribes—there were tribes that were opposed to this. And the Department met with them. But if you look at the statute, under the statute, the Secretary—and I'm quoting now from 2719, section (b)(1)(a), "that the Secretary, after consultation with the Indian

tribe and appropriate State and local officials, including officials of other nearby tribes, determines that a gaming" and it goes on.

So the Secretary had an obligation, I think, under the statute, to meet with the other tribes.

Now, again, I'm not going to get involved in the Federal lawsuit as to whether there were mistakes made by the Department of Interior. But I think that the Department, frankly, would not have been doing its job if it did not consult, as the statute requires them to, to meet with other tribes.

Mr. WAXMAN. Would the gentleman yield?

Mr. BARRETT. I would yield.

Mr. WAXMAN. Why were you surprised—since this is the first ever application for this kind of casino, why were you surprised that your application was subjected to scrutiny, and you were shocked that it was turned down? It just seems to me this thing reeks with controversy. You might have been convinced of your merits and that it was a good—you know, you should have gotten it approved, but, nevertheless, you should have had some suspicions, when the Governor, Republican Governor, lines up, your Republican Congressman is against it, the community is up in arms. Why are you surprised that you possibly ran into a roadblock?

Chairman NEWAGO. If I may respond to that.

Mr. BURTON. The gentleman may respond. The gentleman's time has expired. You may respond.

Chairman NEWAGO. Thank you.

With respect to the issue, I think it needs to be made clear that although this particular application may have had its own individuality, the—this has been done in the past, off-reservation sites. We have one in Milwaukee, WI. Potawatomie site is off reservation. We have the Turtle Lake site that we mentioned earlier. We have a casino in Duluth, MN, run by the Fond du Lac Tribe. So there has been the precedence established, but this did have some individuality.

Chairman ACKLEY. And there is also the Maru Tribe in Detroit.

Mr. BURTON. Mr. Souder.

Mr. SOUDER. I would like to say for the record right off the bat, I'm tired of people covering up for political payoffs.

Mr. BURTON. Would you pull your mic a little closer?

Mr. SOUDER. I would like to see some cooperation like there was in Watergate and other types of hearings from the minority to try to learn the truth rather than trying to constantly cover up, for instance, in this case, the Secretary of Interior, who's admitted that he's lied. We have a chief of staff and counsel who had then taken a job afterwards with the very tribes that are most affected and then laundered money—or directly gave money, didn't even bother to launder it. Some may have come in through other directions, but money into the campaign. And it's shocking.

And what really amazes me is that the party that claims constantly and beats us up for caring about the poor, takes the poor Indian tribes and, through connections, to try to exclude people out of that process and then today tries to distort information.

I want to say up front, I believe gambling is a mortal sin, and I believe you're wrong to pursue the casinos. And I would have not

voted for the bill that Mr. Waxman, Mr. Lantos, and Mr. Kanjorski voted for. And I don't like this manipulation of going off the reservations. For example, when I was in Duluth last year—and let me ask some questions here—there's a casino in downtown, a long way from the reservations; is that not true?

Chairman ACKLEY. Yes.

Mr. SOUDER. I lived in the western suburbs of Minneapolis, and I visited Shakopee, and there is the Mall of America there, and there are plenty of other things. I don't recall that land really being mostly given to Indian tribes in that area. That is a high-traffic, high-density area that's very lucrative, and that's why that tribe is getting $400,000. Is that not correct?

Chairman ACKLEY. That's what I think, too.

Mr. SOUDER. Do you believe that in this case, and do people in your tribes believe that basically the law at BIA and the law in this Government is one law for poor people and one law for people who have clout and money and are willing to do payoffs? Is that part of the impression that's certainly circulating? Because when you go through the events with this, that's what it looks like to an outsider.

Chairman GAIASHKIBOS. That's absolutely correct. In 1994, there was a dinner with the—with some Indian tribes, and the investment—some of the wealthier tribes that could afford $100-, $1,000-a-plate dinner with the Vice President, and the smaller tribes could not afford that type of a dinner and access. And so the question arises to me is, there are tribes with large sovereignty and there are tribes with small sovereignty, and the small sovereignty is meaningless? So you're absolutely correct.

Mr. SOUDER. Because the problem is with this law. And as I understand the law, because in Indiana we've had a fight about the Potawatomies putting in a casino in northern Indiana. The Governor of a State has an automatic power to block this. And, in fact, you said that you wouldn't have gone ahead if you had gotten a veto threat from Governor Thompson, because isn't it true that U.S. tribes—which I don't agree with, but you have rights to put a certain number of casinos in. And Governor Thompson's position was, he wanted a net reduction in gambling, and you were willing to make some agreements that would have potentially resulted in less casinos had you gotten this one? Is that not correct?

And can you explain that, because there seems to be contradictory statements on the record. I have a headline here, and I would like to insert this article into the record: "Thompson says 'he won't stop' casino at dog track."

[The information referred to follows:]

Hudson Star-Observer
2/10/94

Thompson says he 'won't stop' casino at dog track

By Doug Stohlberg

Gov. Tommy Thompson said Friday that he will not stop the establishing of a casino in Hudson if the concept gains approval during other steps of the process.

"I will not promote and I will not block," Thompson said. "I'm on the tail end of the process, and if everyone else, including the local people, approves it before me, I won't stop it."

Thompson made the remarks during a brief question-and-answer session following a speech in Hudson to kick off the community's Hot Air Affair.

When asked if the referendum in Hudson in December 1992 indicated local support, Thompson responded "yes."

In that election, Hudson voters approved the concept of a casino at the dog track 1,351 to 1,288 -- a margin of 63 votes.

The only approval needed in the process is the Department of Interior's Bureau of Indian Affairs and the governor. The governor's comments seem to leave the fate of a casino in Hudson in the hands of the BIA.

The governor has said that he will refer the question to the state's gaming commission for a recommendation. With the 1992 referendum results and potential BIA approval, however, the governor appears to be positioning himself for possible approval of a casino in Hudson.

Thompson has softened his position on casinos considerably since December 1992 when he spoke against the expansion of gambling. At that time he said the closeness of the vote showed that the "community is evidently not united behind the plan."

GOV. TOMMY THOMPSON spoke in Hudson Friday morning at a Hot Air Affair kickoff breakfast. Answering questions later, Thompson said he "will not block" a casino if those ahead of him approve the concept. Staff photo by Doug Stohlberg

Mr. SOUDER. There are different things here, because at any point he could have said forthrightly, as the Governor of Indiana does, it won't happen here, and it would have been over; you wouldn't have spent your money or your time.

Chairman GAIASHKIBOS. That's absolutely correct. In fact, the Governor—again, I have my compact with me. If the committee would like a copy of it, I could make that available to you and look at Lac Courte Oreilles compact signed by Governor Thompson. The Governor, in fact, encouraged one or more tribes to get into an off-reservation sites—rather than have 11 tribes in Wisconsin, have 11 off-reservation sites, he encouraged tribes to consolidate. And these three poor tribes right here consolidated.

Mr. SOUDER. Was the opposition to your doing this casino in Hudson predominantly coming from the St. Croix Tribe or predominantly coming from the wealthier tribes in Minnesota?

Chairman ACKLEY. Minnesota.

Mr. SOUDER. By predominantly, would you say that most of the contributions going into the administration, most of the lobbying, were certainly coming from law firms and people who were from Minneapolis, that the whole Wisconsin thing is really here kind of a diversion and it's an issue many of us feel strongly about, gambling, but really there is a question of political payoff and influence because, in fact, the local community had certainly—one other thing for the record: The dog track vote was not—it was a Hudson dog track casino vote even if the tribe initially proposing it was different, is that not correct, and that's what you were trying to explain for the record?

Chairman ACKLEY. Right.

Mr. SOUDER. And that, in fact, early on indications were from the local community. It was only later on, after the political contributions started, and after the political manipulations started, that local opinion in fact triumphed in a local election. And that's why, in fact, in the early documents, in the draft documents, all the indications were that the administration was going to approve it, and you were going along that direction and the Governor was going to approve it. Otherwise, why would you, as a poor tribe, have wasted your time with this location? It doesn't make sense.

Chairman ACKLEY. Correct.

Mr. SOUDER. Thank you.

Mr. BURTON. The gentleman's time has expired. Is Mr. Lantos next?

Mr. Lantos.

Mr. LANTOS. Thank you, Mr. Chairman.

Mr. FATTAH. Excuse me.

Mr. BURTON. Mr. Fattah, I was going to recognize you. I don't know—your 30 minutes you allocated to different minutes.

Mr. WAXMAN. We're under the 5-minute rule.

Mr. BURTON. Under the 5-minute rule, I think Mr. Lantos is next.

Mr. FATTAH. Thank you, Mr. Chairman.

Mr. BURTON. But I think you're a wonderful guy anyhow.

Mr. Lantos.

Mr. LANTOS. Mr. Chairman, since my friend from Indiana made some observations which I do not think are accurate, and since we

haven't paid the courtesy to the visitors from Wisconsin to be heard, I want to be their voice. We will hear from one of them later today, but I want to give you an inkling of what they are saying.

Colleen Maloney, would you raise your hand?

She's a mother, health care professional, member of the Hudson Housing Authority, and an active participant in the petition drive against the casino in Hudson. She wants to live with her family in a wholesome community free of gambling.

Tom Irwin. Tom, will you—one of Hudson's representatives on the St. Croix County Board of Supervisors. He's president of the Hudson Library Board. He opposes casino gambling because it doesn't promote a healthy family and community environment.

Mary Hawksford. Mary. She's a stay-at-home mother of four young children. Her husband commutes daily right in front of the dog track, as she does on her way to schools, grocers, and the other activities of the day. Hudson is presently a very tranquil, beautiful, family oriented community, she says. She feels that a casino will bring crime, congestion, and temporary visitors that don't care about the community where she lives.

Lori Peper. Lori has been a resident for 22 years. She's one of a large extended family living in the city of Hudson, who love their community and do not wish to see it affected adversely by the introduction of Nevada-style casino gambling. She's the mother of three young children. She's a church musician. She's also taking a moral stand against gambling and the proposed expansion of casino gambling in her State.

Tim and Wendy Hood. They're both professionals working in an international corporation in the Twin Cities. They moved to Hudson because they like the quiet, small town, rural atmosphere close to the Twin Cities. They would never have chosen to live in a town with casino gambling.

Don Jordan. He's not here. He's a professional at a Fortune 500 company. He's opposing casino gambling.

Michael Madden. Michael. He's in the investment business in Minneapolis. He has a 32-mile, one-way commute every day from his home in rural Hudson. The road in front of his home goes right past the dog track. They moved to this location 8 years ago looking for rural contentment. The traffic generated by casino development would seriously impact the traffic traveling past his home. He's also a board member of a YMCA camp which is located right across the road from the dog track, which would clearly be incompatible with Nevada-style casino gambling.

Mark Rieland. Mark is director of human resources for Phillips Plastics Corp. Phillips employs 1,500 people with two facilities in Hudson. He's committed not to expand into communities that have casinos or gambling.

I would like to—since there's been some question about the Governor's statement, I would like to show a tape of the Republican Governor's statement on this issue.

[Videotape shown.]

Mr. LANTOS. That's it.

Now, to have our colleagues on the other side, with overwhelming community opposition, the Republican Governor's opposition, the Republican Congressmen's opposition, claim that there is some-

thing wrong in the Department of Interior turning down a preposterously exploitative contract. That contract concerning the parking lot should be taught in business school as how not to agree to a pattern of exploitation running for a quarter century.

You are victims, the Indian tribes are victims, in this case, not of the Department of the Interior, but of a greedy, wealthy, Florida gambling operation which took advantage of a loophole, or tried to take advantage of a loophole, in the law but, fortunately, failed.

Mr. SOUDER. Parliamentary point, Mr. Chairman.

Mr. BURTON. The gentleman's time has expired. The gentleman will state his parliamentary inquiry.

Mr. SOUDER. It's a parliamentary point. The Governor of Wisconsin did not come out against the casino. What he said was, he wanted a net reduction in gambling, which in fact, depending on the agreement, it would have occurred. And that should be clarified for the record.

Mr. WAXMAN. Point of parliamentary——

Mr. BARRETT. I have a letter here. Again, if you would like me to read it, I'll read it for the third time.

Mr. BURTON. Well, the gentleman will suspend. We've seen newspaper articles saying one thing and the Governor mentioning what was just mentioned by my colleague from Indiana. I think that speaks for itself. We'll let the media go through all of that.

Mr. WAXMAN. Point of parliamentary procedure.

Mr. BURTON. The gentleman will state his point.

Mr. WAXMAN. If the gentleman from Indiana and the other members of the committee vote for my request that the Governor be invited to this hearing, we could get his views directly on the record.

Mr. BURTON. That's not a proper parliamentary inquiry. We will stand in recess for 45 minutes.

[Whereupon, at 1:02 p.m., the committee was recessed for 45 minutes.]

Mr. BURTON. The committee will come to order. I think when we left we had just had the minority have their 5 minutes. Representative Sununu, you are recognized for 5 minutes.

Mr. SUNUNU. Thank you very much, Mr. Chairman.

This morning we heard a line of questioning by the minority that I think established a few somewhat insightful points. They established that gambling is a business but that, like any business, it involves competing interests. They established that there are well-intentioned people supporting these endeavors and very many well-intending people opposing them and many members of this committee that have serious questions about the moral and social implications of gambling on a local community.

These may be interesting points, but the fact is it is not news, nor is it really pertinent to what we need to be talking about here today, because what we need to be talking about is the process, the process that is supposed to be fair and open in making decisions through the gaming legislation and the Bureau of Indian Affairs, and to ensure that that process, is not circumvented by White House staff, that these lines of decisionmaking are not influenced by political contributions to the Democratic National Committee, and that false and misleading testimony is simply not allowed to be made before Congress. Those are the issues at hand as to

whether or not there is improper activity in the decisionmaking process.

Now, in focusing on the process, I want to highlight three pieces of law and legislation and formal agreement. One is the compact that has been mentioned, a legally binding document between the State and the chairman and the various tribes that I fully believe the Governor has every intention of abiding by; second, we have the strong recommendation at the local level from the Interior Department in support of this application; and third, obviously, we have the rights of the individuals to hear the concerns that might be put forward by the Interior Department, to address those concerns, and to provide cures to these defects. And I think that as we look at each of these three parts of the process, we find some very serious questions about what transpired.

Let me focus on the second for just a moment, and that is the very strong recommendation that came from the local level.

I think it was Chairman Ackley, you mentioned the FONSI, the Finding Of No Significant Impact. Can you elaborate a little bit on that, exactly what that meant?

Chairman ACKLEY. What we were told was there were—environmental concerns had to be updated and addressed in the conversion for the dog track compared to the casino. In other words, there's definite rules and regulations that the tribal interests have to be protected and upheld. The Bureau of Indian Affairs suggested that we update that and have our environmental people go through the process and the property and make sure there's no contaminants in the property that were required to be put in trust.

Mr. SUNUNU. And you did so early in the process?

Chairman ACKLEY. Yes.

Mr. SUNUNU. Is that what led to the finding, September 14, 1994, coming out of the Ashland office in Wisconsin? I have a quote here: "It has been determined that the proposed action will not have a significant impact on the quality of human or the natural environment and the preparation of an environmental impact statement will not be necessary."

You are familiar with that finding?

Chairman ACKLEY. Yes.

Mr. SUNUNU. Did anyone at any time subsequent to that ever request that you prepare an environmental impact study?

Chairman ACKLEY. Not that I'm aware of, no.

Mr. SUNUNU. Was there any indication that there were strong environmental concerns at any time between that date and the ultimate rejection on August 14, 1995?

Chairman ACKLEY. No.

Mr. SUNUNU. No correspondence to you that this might be an issue?

Chairman ACKLEY. No.

Mr. SUNUNU. In the rejection letter, however, wasn't there some mention that there were perhaps concerns about the environmental impact?

Chairman ACKLEY. Yes.

Mr. SUNUNU. Any reason in your mind that they might have included that in the letter after all of the findings that there would be no impact?

Chairman ACKLEY. Not clearly, no.

Mr. SUNUNU. Were you given any opportunity to address defects between the original approval from the area office, which was on November 15, 1994, and the final rejection letter?

Chairman ACKLEY. No. That's what concerned me and confused me from the bureaucratic process of not following the Presidential directive of consulting with the tribes.

Mr. SUNUNU. Chairman Gaiashkibos, in April 1995, Pat O'Connor, lobbyist for the opposition, met with Mr. Don Fowler, chairman of the DNC, with the opponents of this project over at the DNC. What do you think they talked about in that meeting at the DNC?

Chairman GAIASHKIBOS. I can only speculate on that question. But I assume, if I can use this example, that with myself, if someone came to me and said, "Mr. Chairman, we have a problem here with this matter," and that happens numerous occasions in tribal politics, and I'm a busy person, I tell someone, "you take care of this matter for me and look into this matter and get back to me," and I assume that's the process that was occurring.

Mr. SUNUNU. Given that it was the Democratic National Committee, the fund-raising organization, do you think they talked about raising money through political contributions?

Chairman GAIASHKIBOS. Yes, in my opinion, that's why they put money in, to be able to have access to the movers and shakers.

Mr. SUNUNU. You certainly weren't made aware of that meeting; were you?

Chairman GAIASHKIBOS. No, I wasn't.

Mr. SUNUNU. Thank you very much, Mr. Chairman. Thank you, Mr. Chairman.

Mr. BURTON. The gentleman's time has expired.

Mr. Kanjorski.

Mr. KANJORSKI. Thank you very much, Mr. Chairman.

This original deal did not involve your three tribes. It involved another tribe originally. And that fell apart and they withdrew from the operation, and then your three tribes got involved.

What period of time did that originally occur? When was the first contact made with your three tribes?

Chairman ACKLEY. Congressman, I was the last tribe talked to about the venture and I don't know exactly when they contacted the Lac Courte Oreilles tribe. I think they were first and then Red Cliff.

Mr. KANJORSKI. And do you know what approximate date that was?

Chairman ACKLEY. I want to say in the latter part of 1993, when I was first contacted.

Mr. KANJORSKI. Now, at that point, were you asked to put any funds into this venture or were you just told that we need you to participate in this venture in order to pursue this application for the off site gambling location?

Chairman ACKLEY. I was informed that the Governor's proposal for the tribes to form the group would show favorable light on his approval of the casino from the dog track venture.

Mr. KANJORSKI. So you were told by someone that it was Governor Thompson's desire that the three tribes get together and form this joint venture with Mr. Havenick?

Chairman ACKLEY. Right, because it would be a reduction of existing sites on a reservation.

Mr. KANJORSKI. Do you recall who told you that?

Chairman ACKLEY. I want to say the other tribal leaders that we had a meeting with. And I think it was Chairlady Bieraugel, along with Chairman Molson from Lac Du Flambeau, I think.

Mr. KANJORSKI. So would it be fair to say it was your understanding that this was a done deal, that if the three got together and formed Four Feathers, the application was going to get the support of the State, the Governor, and was going to move through and accomplish——

Chairman ACKLEY. The directive was to get Federal approval first.

Mr. KANJORSKI. But that if you got Federal approval, the Governor would approve?

Chairman ACKLEY. Yes.

Mr. KANJORSKI. And so, we have heard some statements made by the Governor, letters written and everything, and that is not representative in your opinion of what you were led to believe would be the Governor's position?

Chairman ACKLEY. I've known the Governor for a long time, and it is always a play on words. There is no expansion if there is a reduction. And we're talking off-reservation. If the Federal approval happened, the land would be held in trust for the benefit of the tribe; it would no longer be a public fee simple land, it would be a trust land and the casino could go ahead then.

Mr. KANJORSKI. Do you have any other casinos that the three tribes are involved in, or is this the only investment?

Chairman ACKLEY. No, just our own casinos.

Mr. KANJORSKI. Do any of the others? Do you have any?

Chairman GAIASHKIBOS. The Lac Courte Oreilles has one site and that's on-reservation.

Mr. KANJORSKI. Does that involve Mr. Havenick or his group at all?

Chairman GAIASHKIBOS. No, not at all.

Mr. KANJORSKI. Is it completely Indian run, or is it——

Chairman GAIASHKIBOS. Yes. We have no management company running our operation.

Mr. KANJORSKI. Why did you think in this instance, then, you should make a deal with an outside management company? If you had some experience running an outside gaming operation, why couldn't you just put the three tribes together and make the application to expand your casino operations on this dog track site?

Chairman GAIASHKIBOS. First of all, let me just clarify Mr. Havenick's company is not a management company. It is currently a Class III operation. The facility is there as a Class III operation, and it was basically an opportunity for us without the resources to invest $20 to $40 million to construct a new casino site with a 7-year compact window that we had with the State.

Mr. KANJORSKI. Before that opportunity, he was going to benefit to the extent of 25 to 30 percent of the profits. If in fact you are

putting this venture together, you are going to be responsible for it, if you are financing it, what is the benefit of having this fourth party involved?

Chairman GAIASHKIBOS. We're all going to benefit based on the studies by Arthur Andersen.

Mr. KANJORSKI. I understand. The three of you are clearly going to benefit and clearly Mr. Havenick is going to benefit. But if you already have a gambling casino and you now want to extend it outside of that limit and a new site, why couldn't just the three of you have gotten together if you had an indication that the Governor was going to be supportive?

Chairman GAIASHKIBOS. We don't have those resources, the financial resources to do that, Mr. Congressman.

Mr. KANJORSKI. Well, that is understandable. Did you reach out to see whether you could get those financial resources?

Chairman GAIASHKIBOS. You should see after we signed our compact. We had people approaching us constantly to provide an operation. And we're very diligent. We don't want to have people with questionable backgrounds, be affiliated with people with questionable backgrounds.

Mr. KANJORSKI. I understand that. Someone here said they felt Mr. Havenick was their friend. Is that correct?

Chairman GAIASHKIBOS. Yes, Mr. Havenick is our friend.

Mr. KANJORSKI. Are you aware of the fact that the National Indian Gaming Commission felt that the terms of this agreement were not acceptable under the regulations and under the law?

Chairman GAIASHKIBOS. They never responded to the Lac Courte Oreilles that way.

Mr. KANJORSKI. So you are not aware of the fact that your contract did not comport with the standards set by the Department of Interior and by the regulatory bureau that succeeded what would be acceptable in a contract? None of you were aware of that? This is the first time that you are aware of what I am telling you?

Chairman NEWAGO. Mr. Congressman, it never got to that point. We were never given the opportunity to get to that step in this process. We followed the procedures and the steps that we needed to and never got to that process.

The other thing is——

Mr. KANJORSKI. It has been reviewed by the commission, and the commission——

Chairman NEWAGO. We have not gotten into that discussion with them.

The other thing is that concurrence from the Governor was never given the opportunity because we never got to that step in the process.

Mr. BURTON. The gentleman's time has expired.

Since the other Member who wants to ask questions is not yet here, would you put up on the screen the facts. I would like for all my——

[The information referred to follows:]

HUDSON FACTS

1. Law requires consultation with tribes
2. Lobbyists were hired to stop progress
3. Tribal meetings with big contributors:
   $400,000 (opponents) vs. $6,000 (proponents)
4. $350,000 of contributions to Democrats
5. Duffy and Collier leave Interior to work for Shakopees
6. Collier carried $50,000 check to DNC on behalf of Shakopees

Mr. BARRETT. Mr. Chairman, is this the second round?

Mr. BURTON. No. I have not had a round yet. This is my first.

Mr. BARRETT. OK. Fine.

Mr. BURTON. I think we need to not lose sight of the facts of this case as I see it.

First of all, the law requires consultation with tribes that are applying for a license for a casino. The law of the Interior Department's policies clearly states that local opposition cannot kill an application. There has to be concrete detriments.

The law also says that if the Department believes there are problems with an application, they must—they don't have any latitude—they must consult with the applicant tribes.

Now, in this case, they did not consult with the applicant tribes. What happened was the rich tribes, who were making $400,000 per person, every man, woman and child, hired a very powerful lobbyist, Mr. O'Connor. Mr. O'Connor and others, including the tribal leaders of the rich tribes, did meet with the Department of Interior officials. The tribes in question, even though the law required that they be consulted, were not consulted. But the tribes that had a vested interest in keeping them from getting their license were consulted because Mr. O'Connor, by my reading, had access to the President, the Vice President, and a lot of other people at the DNC. And because of that, he arranged this meeting or they arranged this meeting and the tribal leaders did meet with the people at the Department of Interior.

Now $350,000, at least, was given by the rich tribes after this application was turned down, even though this application moved up the food chain. As soon as this was completed, two very top officials at the Department of Interior, the counsel to Mr. Babbitt and his chief of staff, Mr. Duffy and Mr. Collier, left the Interior Department to work for the rich tribes.

It has nothing to do with whether or not you are for gambling. The fact of the matter is they arranged this meeting, the lobbyists did, the rich tribes were there; the ones that were supposed to be included were not included, were not even informed about it; and then $350,000 was given, which appears to be a political payoff; and then after that Mr. Duffy and Mr. Collier, two top executives at the Interior, go to work for the rich tribe. And then after that, Mr. Collier carries a $50 to $100,000 check to the DNC from the Shakopees.

Now, I don't know how anybody, even if they are blind, could not see these facts. Now, whether or not you are for gambling is irrelevant as far as this is concerned. What we are talking about is whether or not the law was not complied with, No. 1, whether or not campaign contributions were used to exert influence on people in the White House and at the Department of the Interior to kill this project. I think it is pretty clear, at least from my perspective it is pretty clear, that that's what happened and that we intend to make that case as we get further along into our hearings today and later on, and I thought that we should lay that out very clearly because the questioning kind of muddies up the waters as we go through it. So I wanted to take my 5 minutes to lay that out as I see it.

With that, I yield to Mr. Cox. Would you like the rest of my time? I yield to Mr. Cox the remainder of my time.

Mr. COX. I thank the chairman, and I would like to thank our witnesses and thank my colleagues for their attention to this matter.

I mentioned earlier that the question of whether or not your application ought to have been approved is an important one, divisive one, and one that is frankly of no interest to this committee in its oversight role just now, because we are, instead, charged with looking at violations of law in connection with political fund-raising and money and gifts and so on to Government officials in the 1996 and prior election cycles.

The New York Times, among many other papers, has outlined some of the facts in connection with this matter which have led most people to predict that an independent counsel will be required to investigate whether or not the Secretary of the Interior, Bruce Babbitt, in fact lied under oath when he testified last year before the U.S. Senate. The subject of that testimony, the subject of the potential independent counsel investigation, the subject of the Justice Department investigation thus far is not whether or not there should have been casino gambling or a dog track in Hudson, WI, but rather whether a third of a million dollars that was contributed in the process, was given to the Democratic National Committee and to the election effort of President Clinton, was on the level; whether or not the President's involvement in this—and the President, as you understand, was involved—was ordinary and normal; whether or not Bruce Lindsey's involvement was ordinary and normal; whether or not Harold Ickes's involvement was ordinary and normal.

And so, while I understand that none of you worked at the Democratic National Committee, none of you worked in the White House, I want to ask each of you now under oath whether or not you know either personally, or as a result of information that has come to your attention in the course of this, whether or not you know anything at all about the involvement of the President or Bruce Lindsey, who worked for the President in the White House, or Harold Ickes, who worked for the President in the White House, or Chairman Fowler at the Democratic National Committee, do any of you know anything that would lead you to believe that those people were involved in the decision in this matter?

Mr. BURTON. My time has expired. Mr. Cox is recognized for 5 minutes.

Mr. COX. All right. I thank the chairman. And I start with Chairman Gaiashkibos.

Chairman GAIASHKIBOS. I have no personal knowledge of that, Mr. Congressman. However, in discovery, what the attorneys have found, they found internal memorandums and perhaps a phone call made from Air Force One to the White House and also a personal memo that was drafted by the President. I don't have that here at my disposal, but I believe that there was a memo by the President inquiring about what's happening with these Indian tribes, something of that nature. And that's the only knowledge I have of that.

Mr. COX. And do you have any knowledge with respect to the others that I mentioned, either Mr. Lindsey, Mr. Ickes or Mr. Fowler?

Chairman GAIASHKIBOS. No, I don't.

Mr. COX. Mr. Ackley.

Chairman ACKLEY. Mr. Congressman, I have to echo the same sentiment. I don't have any personal knowledge of all those things that occurred, no.

Mr. COX. Do you have any knowledge of any kind? That is to say, has somebody told you of these things?

Chairman ACKLEY. No. I tried to find out things on my own by going to Loretta Avent and following the procedures, and going back to the Department of Interior, and finally having a meeting with Duffy. And as a tribal leader, not having any meetings with the Secretary, I still feel slighted by that somewhat. I think, as Secretary of the Department, he needs to meet with the elected leadership of the Nation of all the tribes and throughout the country. I think that's something that he should be doing at all times.

Mr. COX. And Chairman Newago.

And I should have referred to you as Chairman Ackley. I apologize.

Chairman NEWAGO. We'll forgive you.

I don't have any personal knowledge of these meetings that took place other than the fact that the record speaks for itself with regard to the litigation that we have going on. It is well-documented that there are certain things that took place. As I said, I don't have the personal knowledge, but it is on the record with regard to depositions and other documentations of memos and such that these meetings did occur.

Mr. COX. The New York Times on January 11th, in its recounting of the events that led to this decision, states that "a pivotal day in the process was May 17, 1995. On that morning the Chippewa, seeking casino approval, met with Interior officials, and those Interior officials," according to the New York Times, "never raised any concerns about the application. Afterward, Mr. Eckstein, who also attended the meeting, told his clients that he thought Interior approval was almost assured."

What is your understanding of what happened on May 17, 1995, at that stage in the process? And I just go in the same order that I did before, starting with Chairman Gaiashkibos.

Chairman GAIASHKIBOS. Again, I have no recollection of that or any knowledge on that, perhaps because Arlyn Ackley, Chairman Ackley, at that time was basically the point person for the partnership along with some of his people, staff, that was working on this project.

Mr. COX. Chairman Ackley.

Chairman ACKLEY. Yeah, I was trying to coordinate the information. And I know the conversations we had with the people in Interior Gaming, when they asked me about clearing up the parking lot for the land and trust issue so we weren't landlocked, that gave me an indication that the process was going forward and that they were going to approve the application. Why else would they talk about putting land in trust on behalf of the tribes? My personal

thought was they were indicating that they were going to approve it. That's where I left it.

Mr. COX. Chairman Newago.

Chairman NEWAGO. I was checking. On May 17th, I participated in that meeting with John Duffy, and to be perfectly honest with you, I don't even know who exactly was all in that meeting. I do know that I became rather frustrated because of the types of conversation and the flow of the conversation that we were receiving from the Department people. And I could only relate a childhood experience at that time that I shared with John Duffy, and shortly after that we left the meeting. But I don't recall the specific content of the meeting, but I know that I did become very frustrated.

Mr. COX. As a result of not knowing up until that pivotal stage in the process that there was, in fact, a problem with the application, is it your sense that you were essentially denied an opportunity to remedy any defect in the application?

Chairman GAIASHKIBOS. Yes, that's correct. We weren't notified. At this point we were assuming that everything was on track and that we expected a decision any day that would be favorable. If there was a problem, then we assumed that we would be notified of that problem so that we could work on making the corrections and providing additional information, and that didn't occur.

Mr. COX. And at any time after that stage, were you apprised of the problem so that you could remedy defects?

Chairman GAIASHKIBOS. No.

Mr. COX. Chairman Ackley.

Chairman ACKLEY. The only problem I could see was Duffy standing in the way of us getting to the Secretary. And like I said, my personal feelings is that that still concerns me that the Secretary didn't want to meet with us, and they were giving me indications that there was something else in play, that Duffy was talking on his behalf, and that what Chairman Newago refers to, getting frustrated. We were all frustrated because we didn't know if our message was getting through to the Secretary or not. And as tribal leaders, we were demanding an audience with the Secretary, not with Mr. Duffy, and that's the frustration that we had at that time.

Mr. COX. Chairman Newago.

Chairman NEWAGO. I was unaware of any problems. As I stated a few times earlier, we were preparing to open the casino. That was our belief. We went as far as having a job fair in Hudson, WI. We had continual meetings. We had floor plans drawn up. We were in the process of opening up a casino in Hudson, WI, and that was our belief.

Mr. COX. I see that my time has expired. I thank the chairman.

Mr. BURTON. The gentleman's time has expired. We are about to conclude with this first panel. I believe you would like 5-minutes more?

Mr. BARRETT. If I could. Thank you, Mr. Chairman.

This has been very enlightening for me and actually very helpful, because, frankly, my view of this, reading through the file, was that it was in many ways a moot argument, because to me at least, it seems clear that Governor Thompson was going to reject this, that it didn't make any difference what the Feds did. And as all

of us know, it is a two-step process under IGRA. The first step is for the Department of Interior to make a decision, and then the Governor has the final say.

That is why, as I have read several times now, I thought the Governor's position was clear that he was opposed to the expansion of gambling. And that to me, as I read this letter and watched the tape, although I have a question about the tape, was that there was nothing that could happen.

From what you are saying, you are saying that the Governor's position wasn't that clear; is that right? What is going on here? Because I think that you would agree with me that if you were the Department—if you were Secretary Babbitt and you read this letter, "My position continues to be clear. I do not support an expansion of Indian gaming in Wisconsin," that seems like a pretty clear statement, and that when the Governor is opposed to it, that is the end of the discussion. What is going on under the surface here that made you optimistic that you were going to get this notwithstanding the Governor's public comments?

Chairman GAIASHKIBOS. Congressman Barrett, the political reality today is there is 30,000 Indians in Wisconsin. You, as elected official, realize that with 30,000 voters out there, the Governor is not going to play to the Indian constituents, he is going to play to the major constituents in Milwaukee and Madison and the large metropolitan areas in Wisconsin. And he's saying—what you've seen on this video was a debate during the last term of office that he ran for. And so, anytime the Governor is going to be confronted with that, of course he is going to deny that there is no further expansion of gaming. And if you look at Hudson, that's not a further expansion of gaming. It is currently a Class III facility.

Mr. BARRETT. But again, he was talking about in this letter, Indian gaming off-reservation. Again, "Thank you for your recent letter regarding the expansion of Indian gaming to off-reservation sites in Wisconsin." So even the statement that you could have closed a reservation site in order to open this seems to be foreclosed by this letter.

But my question—and I agree with you that politically, and that was the point I was trying to make in my first round, that the majority of the people in the State of Wisconsin have stated their opposition. But you also stated that you are not a naive man, or words to that effect, and that you would not have been spending the time and effort that you did unless you had reason to believe, reason to be optimistic.

I am asking you that in light of these what seem to me to be unequivocal statements from the Governor, there must have been some reason that you thought there is something going on here, and I am asking you did you have conversations with the Governor or the Governor's staff?

Chairman GAIASHKIBOS. I met with the Governor on several occasions in confidence, and the Governor's indication to me was, yes, you're absolutely correct. It had to go through the hurdles that it had to go through. And when it reached that point, if it was approved by the Feds, meaning the Bureau of Indiana Affairs, Interior, that he would not stand in the way.

Mr. BARRETT. So you are saying that this letter, then, is false?

Chairman GAIASHKIBOS. I'm saying—I'm not saying the letter is false. I'm saying that the Governor has been very wishy-washy on this issue all along. But let me just say this: We would not have had to close down our reservation site, because in our compact we have the opportunity for two sites.

Mr. BARRETT. Right. But when I read this letter, I thought, OK, maybe what is going on here if he was trying to be clever is to say an expansion of gambling, there would not be an expansion of gambling if one site was closed and another one was opened. Do you know what I am saying?

Chairman GAIASHKIBOS. Yes.

Mr. BARRETT. And you are saying that that is not even the case?

Chairman GAIASHKIBOS. That's not the case.

Chairman ACKLEY. Congressman, the Governor was aware that we made application for the conversion of the dog track into a casino. Once the land is put into trust status, then the Indian casino can go ahead, but it needs the concurrence of the Governor to object to that or not.

Mr. BARRETT. But let me ask you this question: If you were the Department of Interior and you had this letter that I read from several times, what would you conclude the Governor's position to be?

Chairman ACKLEY. That he doesn't want any expansion of gaming.

Mr. BARRETT. Mr. Gaiashkibos.

Chairman GAIASHKIBOS. And if you read the press, I think you're going to get a whole different picture, because just as the chairman put on the screen, the Governor at one time said he's in favor of this. In fact, it was the Governor that pushed this proposal on us because the Lac Courte Oreilles wanted to open an additional site early on in Bayfield County, and the Governor said, I'll never support that unless there's two or three tribes in consortium to do this.

Mr. BARRETT. My time is running out. One final question. Much has been said about the meeting with the Department of Interior officials and members of other tribes, representatives of other tribes. Did you have any meetings with the Governor or Governor's people without opponents of Indian gaming being present?

Chairman GAIASHKIBOS. When it's tough to get an audience with the Governor myself and the Governor not returning phone calls to me, I assume if I'm going to meet with the Governor, it is his privilege and right to meet wherever he wants to.

Mr. BARRETT. I am not trying to impugn your integrity or anything. I just want to make the point that, yes, they met with some people. It is not unusual that you are not going to meet with the different factions at the same time.

Chairman GAIASHKIBOS. Perhaps he did unbeknownst to me.

Chairman NEWAGO. Mr. Chairman, if I may respond to some of these questions?

Mr. BURTON. The gentleman may respond.

Chairman NEWAGO. I guess getting back to the point is that we never got to the point where we were going to ask the Governor whether he concurred or not. The application took a quick downslide, and we never got to that.

Mr. BARRETT. But his letter is dated June 9th.

Chairman NEWAGO. But we never got to that point of whether the Governor was going to concur with it or not.

Mr. BARRETT. I think my time has expired.

Mr. BURTON. The gentleman's time has expired. Unless Members wish to continue questioning, I think we are through with the panel.

Mr. CUMMINGS. Mr. Chairman.

Mr. BURTON. Representative Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

I want to take a moment to thank the gentlemen for being here this morning. In my district, I represent a lot of poor people, and I certainly can understand your efforts to try to lift their lives up. I really do. I have always been against gambling, but I understand what you are trying to do.

I also want to compliment our friends here from Hudson. The mere fact that you have taken your own money to come down here today, take up time to be with us to provide whatever you could in the way of testimony, we really do appreciate it. I thank you on behalf of all of us for being here.

Around this Congress, I might tell you that we hear a lot about family values. And I have always believed that if we are going to have family values, we must value families. That is so important. And I think that, as listening to some summaries a little bit earlier about who you are and the fact that you want your community to stay the wonderful community that it apparently is, we certainly understand that. We also value the fact that you value a wonderful family life, and so we thank you for being here.

I just have one question for our witnesses. You know, when you have wonderful people like the group here from Hudson, and I know you must have known, and based upon a number of the things that Mr. Barrett has asked, you must have known that you were going to have stiff opposition to this. And I am just wondering, this wasn't a surprise to you; was it? Hello. Somebody speak up.

Chairman ACKLEY. Not to me it wasn't.

Mr. CUMMINGS. The opposition, you weren't surprised at it at all; were you?

Chairman ACKLEY. No.

Mr. CUMMINGS. So it is just interesting to see you there and to see them here and the fact that nobody subpoenaed them I don't think. They came here because they care. And so, I would imagine that when you have people that care that much to come here to Washington from Wisconsin and take a day or two off from work and to pay that airplane fare or however they came, that is very, very significant. And so, I can understand why perhaps Governor Thompson stated the things that he said in the letter that my colleague, Congressman Barrett, talked about. And I can certainly understand why this proposal went down the tubes.

Mr. Chairman, I will yield to my colleague, Mr. Kucinich.

Mr. KUCINICH. Thank you very much, Congressman Cummings, and to my colleagues.

The concerns that we hear today, as addressed by the chairman at the beginning of this committee meeting, had to do with whether or not there was any, essentially, plausibility for the rejection by

the Department of the Interior of the application or if, in fact, the decision was made as a result of sharper political considerations.

I think that as we consider those issues and debate in this committee there are a few things that can be said without coming to any conclusions, and that is, first of all, when you have representatives here of Indian tribes who have described the conditions which exist on those reservations, we have to do something in this country to make sure that people are able to survive without resorting to casino gambling as a possible way of sustaining their economic livelihood; we have to do more for American Indians across this country. And I want this acknowledged here today in this forum.

Furthermore, the concerns that the Department of Interior had to address, whether or not there were political motivations behind them, they had to be something plausible, first of all, that there was community concerns and objections. Hudson apparently made a very strong case why there should not be a casino in their area.

I am a former city councilman and a former mayor of a city, and I understand what it means when people of a neighborhood really don't want something in their community or anywhere near it. So I can understand why they would be very strong in their objections to a casino or any kind of gambling in their area. That should not be taken personally by the members of the Indian tribe, because I am sure they would object to that if it was sponsored by anyone. However, the fact that it is coming from a group that is economically disadvantaged to begin with certainly raises concerns for your plight.

Furthermore, I think that when we look at whether or not the Interior Department made the right decision, we have to see if there is any plausibility in their rejection. And if they have concerns of the contract that was laid out, which you so ably would contest, or the concerns of the community as part of their rejection, I think we have to give that some credibility, and then we are going to listen later to evidence as to whether or not it has been political. But I certainly want to congratulate you on bringing forward the plight of Indians.

In Cleveland, we have an active movement. I am familiar with Dennis Banks and Russell Means and others from 25 years ago, when they were stating the concerns about economic viability. So while this hearing will pass away at some point, your concerns have to continue to be articulated. And you didn't get the gambling outlet you were seeking, but you sure better get some economic assistance in that area, and I support you in that.

Chairman NEWAGO. Mr. Chairman, if I may respond?

Mr. BURTON. The gentleman may respond. We are about to wrap this up, so go ahead.

Chairman NEWAGO. OK. It is very difficult for me to sit here and hear about objection. When I sit in northern Wisconsin and look at the situation in Connecticut, and for the most part the entire State opposed and objected the annexation that the Pequots presented, and the Department of Interior approved that. And it is in litigation yet I believe. So for objection, it is difficult for me to understand that.

The other point I want to make is that the trust responsibility is an obligation that this agency has to me, a Native American. And a lot of people don't like to hear that.

And Congressman Cummings was talking about opposition. As a man of color, we understand opposition. My children understand opposition. I can remember when we were in the middle of our treaties in a battle we had in Wisconsin, young Indian women at a basketball game were being ridiculed and picked on because of the color of their skin. We understand opposition and we understand the rippling effect that takes place.

And we talk about morality in this community of Hudson. I've got cousins that live in Minneapolis, MN. Every Sunday afternoon they drive to Hudson, WI, and they drive over because they can buy beer over there. That's what they do. Every Sunday that bridge is full of Minnesota plates going across there.

So we talk about moral issues. We dealt with the opposition. We follow the procedures that this Congress has put before us and that agency, the Bureau of Indian Affairs. And something is not right with the picture. We talk about family and we talk about all the good things. But something is not right with the picture.

And I don't want to be involved in this debate with the Republicans and the Democrats and who did what. Because you're probably right, maybe on the other side there is something over there. I don't want to be a part of that. What I want to know is, if we want to get to the truth, let's get to the truth.

I've got a bunch of documents that I continue to look at here that tell me that something is not right with the picture. It is frustrating for me because I'd certainly like to see someone stand up and say, hey, let's take a look at this. That's why I'm here.

Chairman GAIASHKIBOS. Mr. Chairman, I believe that early on I was going to be afforded a few closing remarks, if I could, please.

Mr. BURTON. OK, quickly.

Chairman GAIASHKIBOS. Thank you.

I, too, as Chairman Newago, I want to state emphatically I'm not here to get into a partisan fight. I'm here to tell the story on behalf of my people at Lac Courte Oreilles as a tribal leader. I fought for both the Democrats and Republicans and the one Independent that serves on this committee as a Marine Sergeant in Vietnam. And my battle here today is on behalf of my people.

Statistics have proven, in Sawyer County, where I reside, where my reservation is, that there was a—that our friends from Hudson stated there is more crime where there is gaming. There is crime throughout this country. I'm afraid to come to this Nation's Capital because of the crime. But I want to point out that we found out that the opposite is true. When you provide opportunities for all people for jobs, there is less crime in the communities because people are working.

And I, too, feel strongly on the moral grounds that Minnesota is a dry State on Sundays and people travel back and forth from Minnesota and Wisconsin, and I don't see a great outpouring to stop that alcohol flow and the carnage on the highways that we see today with drunk drivers.

In conclusion, I just want to remind you that I feel it ironic that a mid-level official within the Bureau of Indiana Affairs, Michael

Anderson, would make a monumental decision on behalf of the Department of the Interior when it is clearly the Secretary's position to make that.

And in closing, I'd like to invite you out to the Lac Courte Oreilles on a fact-finding mission, and throughout Indian country, and see for yourself the economic hardships that our people face today. I just want to say that Mr. Havenick and his family are very honorable people, and I want to thank them for their support in this project, and I feel strongly that we put a lot of work and effort into this and we're not some dumb Indians that are sitting out in Indian country being taken advantage of.

Mr. BURTON. Let me just end up by saying that the Interior Committee Chairman Don Young and Subcommittee Chairman Richard Pombo will be looking into some of the problems that you alluded to today. I talked to Mr. Pombo about this last week. So I am sure that he will be looking into some of the other aspects of the problems that you face.

With that, I want to thank you all very much for being with us today. I think you acquitted yourselves very well.

Chairman GAIASHKIBOS. I thank you, with all due respect of all the members of the committee. Be good.

Mr. BURTON. Our next panelist is Mr. Fred Havenick. Mr. Havenick, if you would come forward at this time.

Mr. Havenick, would you remain standing so you could be sworn in, please.

[Witness sworn.]

Mr. BURTON. I now recognize the committee's chief counsel, Mr. Richard Bennett, for 30 minutes. Excuse me. Mr. Havenick, do you have an opening statement?

Mr. HAVENICK. I've been sitting here all morning and hoping that I would get my opportunity.

Mr. BURTON. Well, then, you will get a 5-minute opening statement, and if it is longer than that, you may submit it for the record.

STATEMENT OF FRED HAVENICK, SOUTHWEST FLORIDA ENTERPRISES

Mr. HAVENICK. Thank you.

Chairman Burton and distinguished members of this committee, my name is Fred Havenick, and I reside in Miami, FL. Along with other members of my family, I am engaged in a variety of business activities in Florida and other parts of the country, including ownership of dog tracks in Florida, Texas, and Wisconsin. I would like to give you a short overview of how we got here today.

In 1987, the voters of Wisconsin endorsed the establishment of gambling in their State by popular vote. Our company, along with numerous others, submitted proposals to open dog tracks there, and in 1989, we were granted a license for such a facility in Hudson, WI, which is just outside Minneapolis, St. Paul.

One of the requirements for licensure was approval to build the track by the local city council, which we had received the previous year. It took more than 2 years from the time of licensure to the opening of the facility. Among the reasons for this long period of time was that we were required to build a new interchange on

Interstate 94 and a four-lane highway to the track site. We also had to construct a major earth and berm, and to comply with various other State-required environmental safeguards.

Virtually the same month we opened, in 1991, Indian casinos began operating near us in both Wisconsin and Minnesota. A Federal judge had ruled earlier that year that when the lottery had passed in Wisconsin all games of chance were permitted. From that very first day, the track lost money.

It quickly became clear that we could not compete with Indian casinos. At the same time, some Indian tribes found that they themselves were competing on an uneven playing field. Those with reservations in remote areas of the State were not generating meaningful revenues at their casinos, while tribes lucky enough to be located near big cities were getting very rich.

By early in 1992, it became apparent to us and some of the Indians that we both had what the other needed. Each had one-half of the molecule. We had one of only five Class III gaming facilities, located on a prime site near a heavily populated area, and they had a product that was much more attractive to the public than ours.

All business deals are marriages of convenience. In 1992, we were approached by the St. Croix Chippewa to turn the dog track into an Indian casino. As part of that effort, a plebescite was held on a snowy day in December 1992, in which the voters of Hudson endorsed our proposal by a simple majority. However, our partnership attempts with the St. Croix fell through and we began working with other Chippewa tribes located in far northern Wisconsin. This arrangement was finalized in the fall of 1993.

This business arrangement, negotiated jointly by our attorneys and attorneys for the three tribes, was quite simple. We would turn the track over to the tribes once an application to place the land in trust was approved by the Federal and State governments but would continue to be the sole guarantor of the mortgage. A management company, consisting of the three tribes and myself, would be formed to operate the casino and split the profits four equal ways. The existing debt on the track, about $40 million, would be paid by the partnership. In addition, that same partnership would own and operate the parking lot, though this land would not be put in trust. The parking lot would also be used as security for the mortgage on the track.

Our partnership was unique in many respects. First, the land going into trust had already been approved by and was operating as a Class III gaming location in Wisconsin. It has continued to do this to the present time. Second, the compacts, as previously described, had envisioned and permitted off-reservation gaming.

Third, this was a fair and equal four-way partnership between three Indian tribes and a non-Indian company. Each of the partners had two representatives on what would be a board of directors. From the beginning, the tribes would have six of the eight votes. A simple majority governed the operations. Management responsibility was divided equally, not dominated by the non-Indian group. Since the dog track and most of the other facilities were already built, financing was already in place. Any and all guarantees would be solely our responsibility. There was never to be any liability on the part of the tribes.

It is important to stress that while we had financial responsibility for the casino building and the parking lot, all decisions on management would be controlled by the tribes. They would have three-fourths of the votes on all matters. We would not profit in any way from the transfer of the building to the tribes, we would only receive one-fourth of the profits from the operating casino.

It took over 1 year for the partnership agreement to be written. Numerous meetings were held between us and our lawyers and the tribes and their lawyers. In late 1993, the tribes began the application process to place the land in trust. At that time we recognized that taking the land off the tax rolls could be detrimental to the interests of the city and other governments. We entered into negotiations with the city, county, and school board to develop a payment-for-services contract based on needs that were calculated by the local governments themselves. This agreement was finalized and overwhelmingly ratified by all parties in the spring of 1994. This included the city of Hudson, St. Croix County, and the Hudson School Board.

The remainder of the story has been well documented. The tribes received unqualified approvals for the casino application from the BIA offices in Wisconsin and Minneapolis, and their approvals were sent to Washington late in 1994.

While we were told the confirmation process there would take about 30 days, we heard nothing for months. We now know that soon after the Minneapolis office approval was announced, an intense lobbying and propaganda campaign began against us. We finally learned that lobbyists from opposing tribes intervened and delayed the process.

Delay was expensive for all of us concerned. For my business, delay meant continuing to pour millions of dollars into the track in Hudson so it could keep operating. For the tribes, delay meant continuation of life in poverty for thousands of tribal members.

In late April, we engaged the services of Paul Eckstein whom we knew to have access to Secretary Babbitt. Paul's job was not to sell the casino project but to find out what we could do to get the application back on track. As we again found out later, there was nothing he or anyone else could do.

Two incidents that took place following the turndown of the application perhaps tell the story best. The first was on August 15, 1995, just a month after the rejection. I was at a fund-raising event in Florida where I ran into Terry McAuliffe, chairman of the finance committee for the President's re-election campaign. After the meeting, I went to say hello to Terry. I've known Terry for quite some time, mostly through his political activities. At the same time, Terry approached me with a large smile on his face and said, what's doing in doggiedom? I said that we were having an enormous problem with an Indian gaming project in northern Wisconsin. He said, oh, I know all about that; to which I responded, come into my office, a private corner of the meeting room.

I recall that Terry said, I took care of that problem for you. I was baffled and asked him what he meant. I recall that he said, I got Delaware North's Indian casino project killed, the one that would have competed with you. I set up the meeting with Fowler and others and turned it around.

I told Terry that was my project and I was the one who owns the track in Hudson. His face dropped. He was clearly in shock and said little else.

The second incident took place on December 3, 1996, at the reservation of one of our partners, the——

Mr. COX [presiding]. I am sorry, Mr. Havenick. Could I interrupt you? What was the date of that conversation?

Mr. HAVENICK. August 15, 1995.

Mr. COX. Thank you.

Mr. HAVENICK. The second incident took place on December 3, 1996, at the reservation of one of our partners, the Lac Courte Oreilles in Wisconsin. There was a meeting attended by all three partners, myself, and officials of the BIA, including George Skibine. During the meeting, there was much complaining about the turndown of the Hudson casino application. Finally, Mr. Skibine said, look, don't blame me; we would have given it to you; it was the political people who turned it down.

I am the main reason we are all sitting here today discussing the Hudson casino. I was the one who absorbed Mr. Eckstein's costs that led to Mr. Babbitt's damning statements. And after the rejection, I funded the lawsuit that uncovered the evidence of political improprieties in the decision. I believe I was the factor never considered by Heather Sibbison when she told the White House in a moment of callous hubris that they were going to turn the tribes down without much explanation. "Without much explanation," I believe that is a direct quote.

I believe the Department never thought that they would have to explain their actions because, after all, this was just a bunch of poor Indians who would never be able to fight back. They could have a major project turned down without much explanation because no one would ever come forward and ask for one. But these tribes had a partner who had much to lose as well as to gain and who, fortunately for them, had the resources and the will needed to tear at the fabric of the Department's cover story and to continue the fight.

A grievous wrong had occurred. These tribes had spent years putting this agreement together. They successfully negotiated in good faith with the local community. They obtained a favorable recommendation from the local and regional BIA offices. We all played by the rules.

The Secretary of the Interior violated his fiduciary responsibilities to these tribes when he claims that he blindly accepted the city of Hudson's 11th-hour change of direction without requiring any explanation or attempting to resolve any identifiable problem with the project.

These tribes and their 10,000 members were simply sold out. The Secretary of the Interior decided to protect the gaming monopolies of extremely rich tribes.

Unlike the tribal members, I am a businessman with other ventures to rely upon. But even to me the downturn of Hudson has been devastating. If at end of the day this project fails, I can go on to other matters; I do have other resources. My partners, however, have no other matters to go on to. They are poor, and they

will remain poor. They have one chance for their day in the sun, and that chance is in Hudson, WI.

Before I take your questions, I want to set the record straight on the claims that there is thunderous local opposition to this project. This project and property historically was a farm in rural St. Croix County. There's a picture of the track and the parking lot to my right. It was only annexed into the city of Hudson to obtain city sewer and water services.

St. Croix County is by far the largest local governmental unit that took an official position on this project. The county has a population of 54,500, contains over 900 square miles, and is governed by a 31-member county board of supervisors representing all areas of the county, including the city of Hudson and the town of Troy. The city of Hudson has a population of 7,000, the town of Troy a population of 3,000.

Counties in Wisconsin have significant governmental responsibilities, including law enforcement, the courts, health services, social services, welfare service, protective service, mental health service, and highway maintenance. The St. Croix County Board of Supervisors overwhelmingly supported our proposal in 1994. And despite intense 11th-hour lobbying, they affirmatively refused to back the Hudson City Council's last minute 4 to 2 vote reversing the city's position.

The county's position is not surprising. Outside the city of Hudson and the town of Troy, there is a substantial desire for economic development and good-paying jobs. Not everyone is as rich as the people who live in Hudson. This project would create over 2,000 jobs for St. Croix County residents. In addition, the dog track has been the catalyst for a number of new local businesses such as Wal-Mart, K-Mart, a Fairfield Inn, and a Menard's Home Improvement Center. Everyone understood that this project would produce significant new business and employment opportunities. That is why the broader local community of St. Croix County never changed its position that the project would not be detrimental to the surrounding community.

[The prepared statement of Mr. Havenick follows:]

Statement of Fred Havenick to
House Government Reform & Oversight Committee
January 21, 1998

My name is Fred Havenick and I reside in Miami, Florida. Along with other members of my family I am engaged in a variety of business activities in Florida and other parts of the country, including the ownership of dog tracks in Florida, Texas and Wisconsin. I would like to give you a short overview of how we got here today.

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intense lobbying and propaganda campaign began against us. We finally learned that lobbyists from opposing tribes intervened and delayed to process. Delay was expensive for all of us concerned. For my business delay meant continuing to pour millions of dollars into the track in Hudson so it could keep operating. For the Indians delay meant the continuation of life in poverty for thousands of tribal members.

In late April we engaged the services of Paul Eckstein, whom we knew to have access to Secretary Babbitt. Paul's job was not to sell the casino project but to find out what we could do to get the application back on track. As we again later found out, there was nothing he, or anyone else could do.

Two incidents that took place following the turndown of the application perhaps tells the story best. The first was on August 15, 1995, just a month after the rejection. I was at a fundraising event in Florida when I ran into Terry McAuliffe, chairman of the finance committee for the president's re-election campaign. After the meeting, I went to say hello to Terry. I've known Terry for quite some time, mostly through his political activities. At the same time Terry approached me with a large smile on his face and said "What's happening in Doggydom?" I said that we were having an enormous problem with an Indian gaming project in northern Wisconsin. He said, "Oh, I know all about that", to which I responded, "come into my office" - a private corner of the meeting room. I recall that Terry said "I took care of that problem for you". I was baffled, and asked him what he meant. I recall that he said, "I got Delaware North's Indian casino project killed - the one that would have competed with you. I set up the meetings with Fowler and others and turned it around". I told Terry, that was *my* project and that *I* was the one who owns the track in Hudson! His face dropped. He clearly was in shock. He said little else.

The second took place on December 3, 1996 at the reservation of one of our partners - the Lac Courte Oreilles in Wisconsin. There was a meeting attended by tribal members from all three of our partners, myself and officials of the BIA, including George Skibine. During the meeting there was much complaining about the turndown of the Hudson casino application. Finally, Mr. Skibine said: "Look, don't blame me. We have it to you. It was the political people who turned you down."

I am the main reason we are all sitting here today discussing the Hudson casino. I was the one who absorbed Mr. Eckstein's costs that led to Mr. Babbitt's damning statements. And after the rejection, I funded the lawsuits that uncovered the evidence of political improprieties in the decision. I believe I was the factor never considered by Heather Sibbison when she told the White House in a moment of callous hubris that they were going to turn down the tribes "without much explanation". I believe the Department never thought they would have to explain their actions because, after all, these were just a bunch of poor Indians who would never be able to fight back. They

could have a major project turned down without much explanation because no one would ever come and ask for one.

But these tribes had a partner who had much to lose, as well as to gain, and who fortunately for them had the resources and the will needed to tear at the fabric of the Department's cover story and to continue the fight. A grievous wrong had occurred. These tribes had spent years putting this agreement together. They successfully negotiated in good faith with the local community. They obtained a favorable recommendation from the local and regional BIA offices. We all played by the rules.

The Secretary of the Interior violated his fiduciary responsibility to these tribes when he claims that he blindly accepted the City of Hudson's eleventh-hour change of direction without requiring any explanation or attempting to resolve any identifiable problem with the project. These tribes and their 10,000 members were simply sold out. The Secretary of the Interior decided to protect the gaming monopolies of extremely rich tribes.

Unlike the tribal members, I am a businessman with other ventures to rely upon. But even to me the turndown of Hudson has been devastating. If at the end of the day this project fails, I can go on to other matters. I do have other resources. My partners, however, have no other matters to go on to. They are poor, and they will remain poor. They have one chance for their day in the sun, and that chance is in Hudson, Wisconsin.

Before I take your questions I want to set the record straight on the claims that there is "thunderous local opposition" to this project.

This property historically a farm in rural St. Croix County. It was only annexed into the city of Hudson to obtain city sewer and water services.

St. Croix County is by far the largest local governmental unit that took an official position on this project. The county has a population of 54,500, contains 913 square miles, and is governed by a 31 member county board of supervisors representing all areas of the county including the city of Hudson and the town of Troy. The city of Hudson has a population of 7,285. The town of Troy has a population of 3,097.

Counties in Wisconsin have significant governmental responsibilities including law enforcement, the courts, health services, social services, welfare service, protective services, mental health services, and highway maintenance. The St. Croix County Board of Supervisors overwhelmingly supported our proposal in 1994 and, despite intense eleventh-hour lobbying, they affirmatively refused to back the Hudson City Council's last minute 4-2 vote reversing the City's position. The County's position is not surprising. Outside of the city of Hudson and the Town of Troy there is a substantial

desire for the economic development and good paying jobs. This project would create over 2,000 jobs for St. Croix County residents.

In addition, the dog track has been the catalyst for a number of new local businesses such as a Wal-Mart, a K-Mart, a Fairfield Inn and a Menards Home Improvement Center. Everyone understood that this project would produce significant new business and employment opportunities. That's why the broader local community of St. Croix County never changed its position that the project would not be detrimental to the surrounding community.

Mr. COX. Mr. Havenick, thank you very much for your testimony.

I am next going to recognize the senior investigative counsel, James Wilson, for 30 minutes. Before I do so, I would like to ask you to go over as plainly as possible one element of your testimony.

In preparing for this hearing, I have reviewed scores of Government documents and a mountain of press clips and I have not heard before from any source what you have recounted, the explicit statements made by Terry McAuliffe which you told me were made on August 15, 1995. Could you tell me as plainly as possible what happened and what he said?

Mr. HAVENICK. Yes. I was at a fund-raiser in Miami and I——

Mr. COX. A fund-raiser for whom?

Mr. HAVENICK. A fund-raiser for the Clinton/Gore Re-election Campaign.

Mr. COX. To which you were a donor?

Mr. HAVENICK. To which I was an attendee and a donor.

Over the years—I know Terry McAuliffe because Miami is a hotbed of political activity and many of our—my personal friends are very involved with the Democratic party and the Republican party.

In the middle 1980's, I also became involved in a lot of the political happenings, in part because of what was happening in Miami in the early 1980's, when it had been overrun and it was kind of paradise lost. So there was a tremendous interest in bringing the attention of the national Government, the Federal Government, to the plight of what was happening in Dade County.

Through a friend of mine, Jerry Berlin, I met Terry McAuliffe and at that time and for years after was a fair contributor to the Democratic party. I've also contributed to the Republican party, but during that time I was a member—he was a member of the Democratic Senatorial Campaign Committee, and he was involved in various other fund-raising events, one of which was held at Barbara Streisand's house, and I met various political figures, both Democrats and Republicans, but primarily Democrats, and it was interesting to hear what was happening in the rest of the world and to tell them what was happening in Dade County.

That's the background of my knowledge of Terry. At the meeting on August 15th, I hadn't spoken to Terry McAuliffe probably in 3 years, and he was the one who ran the meeting. He was describing the efforts to run the President's re-election campaign, and one of the primary goals was to raise a sufficient amount of money that there would not be any primary fight over the nomination. And I was sitting there and listening, and I was a potential contributor.

After the meeting, I walked up with one of my friends to say hello to him, and he recognized me and said to me, you know, how are you doing? What's happening in doggiedom? "Doggiedom" was our reference to the world of dog racing. And we started the conversation. And I said, things are really not going all that well in northern Wisconsin, where we have a track. And he said, oh, I know all about that. And I was surprised.

And there were a lot of people standing around, so I said to him, you know, please come into my office, meaning a quiet corner of the room. And when I was in that corner of the room, we had the discussion which involved his involvement with Fowler and getting the meeting set up.

Mr. COX. This is particularly the part of your testimony I'm interested in. Could you recount that as explicitly as you could recall it?

Mr. HAVENICK. Yes. We went into the corner, and he said to me—I said, we are having tremendous problems with an Indian casino in Hudson, WI. And he said to me, I know all about that. And I said, what do you know? And he said, I was instrumental in getting that proposition turned down; I worked with Chairman Fowler and others to get that Delaware North proposition turned down, and you will not have them as competition. And I said, that's not—that track is not Delaware North, that track is us, and that was my project that was killed. And he was—he was startled by that. That was the extent of that conversation.

Mr. COX. Thank you, Mr. Havenick.

And I now recognize counsel. The time that you have just taken will come out of my time, and I recognize counsel, James Wilson, senior investigative counsel, for 30 minutes.

Mr. WILSON. Mr. Havenick, good afternoon. We very much appreciate your coming here today. Representative Waxman requested that you appear today, and we are very pleased that you were able to come.

I know the Hudson Dog Track has been a long ordeal for you, and we really do appreciate the candor of your opening statement, and I certainly would like to followup on a number of issues that you have raised during the statement.

But before getting into some of the substantive issues, I wanted to ask you about the Department of Justice investigation of this matter. Has anyone from the Department of Justice ever spoken with you about the Hudson Dog Track?

Mr. HAVENICK. No, they have not.

Mr. WILSON. You have been to Wisconsin and have met with tribal chairmen on a number of occasions, haven't you?

Mr. HAVENICK. Yes, I have.

Mr. WILSON. And you have met with numerous Department of the Interior decisionmakers; isn't that correct?

Mr. HAVENICK. Yes, I have.

Mr. WILSON. You also met with the Governor of the State of Wisconsin; have you not?

Mr. HAVENICK. Yes, I have.

Mr. WILSON. And you do have a considerable knowledge about the community support and opposition to this particular application; is that correct?

Mr. HAVENICK. Yes, I do. That is correct.

Mr. WILSON. Overall, would it be fair to say that you are one of the people who knows the most about the entire Hudson Dog Track matter; is that correct?

Mr. HAVENICK. That would be correct.

Mr. WILSON. You also met with a number of fund-raisers and contributors, and you just recounted a story about a meeting with Terry McAuliffe, and you've discussed the Hudson Dog Track matter with those individuals; is that correct?

Mr. HAVENICK. I never discussed the Hudson Dog Track matter with anyone at a fund-raiser prior to the turndown in July 1995, no.

Mr. WILSON. Now, you did mention two things in your opening statement that really caught our attention. One was the meeting you have just recounted with Mr. McAuliffe. I believe at the time he was the chief fund-raiser for the Clinton/Gore 1996 Re-election Campaign.

You also mentioned a meeting with Mr. George Skibine, who is a witness scheduled to appear tomorrow, and you discussed a meeting you had with him, and I'd like to ask you questions about that later. But I'll ask you again, notwithstanding your involvement with this matter, you've never been contacted by the Department of Justice; is that correct?

Mr. HAVENICK. I have never been contacted by the Department of Justice.

Mr. WILSON. Thank you.

Now, I'd like to followup a little bit with the meeting that you mentioned that took place at the Lac Courte Oreilles Reservation in Wisconsin. It was a meeting in your opening statement that you indicated George Skibine attended. Do you recall what the purpose of that meeting was?

Mr. HAVENICK. Yes. The purpose of that meeting was to go over ways in which we could correct the situation on our application. It was to go over a review of where we were in the application process, even though it had been turned down.

Mr. WILSON. And is it fair to say you were there to participate in that review of the Hudson Dog Track application to that point?

Mr. HAVENICK. Yes, it is.

Mr. WILSON. How did the subject of the Hudson Dog Track rejection come up at that meeting?

Mr. HAVENICK. The meeting was—was held in the bingo hall of the Lac Courte Oreilles, which is a fairly large room, and there were a number of questions that were asked. But the main question that was on the minds of both the three tribes and myself was what happened in Hudson, and it just naturally came up among the first questions that were asked.

Mr. WILSON. And was that a question asked directly of Mr. Skibine?

Mr. HAVENICK. Yes, it was.

Mr. WILSON. And what did Mr. Skibine say when he was asked what happened with the application?

Mr. HAVENICK. At first Mr. Skibine started answering the question in political terms, but when he was pressed after about the third or fourth question, he said it was kind of a mea culpa. He said, listen, we would have approved it or we approved it. When it got upstairs, politics took over.

So I got the impression that he was trying to justify to the tribes that he was not the person who was involved in the final decision, because I had always felt that he was in favor of this decision, that he was extremely sympathetic to the plight of the tribes.

Mr. WILSON. So knowing what you knew about Mr. Skibine's involvement, did he appear—when he finally gave an explanation, did he appear to mean what he said?

Mr. HAVENICK. Yes.

Mr. BURTON [presiding]. Would counsel let me interrupt just for a moment?

Were there other witnesses there when Mr. Skibine said that?

Mr. HAVENICK. Yes, there were.

Mr. BURTON. Could you enumerate or give us the names of some of the people that were there?

Mr. HAVENICK. Yes, Rose Gurnoe from the Red Cliff Tribe was there. Chairman Ackley was there. Bill Cadotte from the Lac Courte Oreilles was there. Margaret Diamond from Lac Courte Oreilles was there. Al Trepania from Lac Courte Oreilles was there. And there were probably another 10 people from the tribes—at least 10 people who were there. And there were also people from the—from the Bureau of Indian Affairs who were there.

Mr. BURTON. We may not have all of those names. I'd like for you, to the best of your knowledge, give us a list of those, because we are going to have not only you under oath but Mr. Skibine and others, and we want to make sure that we get the correct answers on these questions.

And, once again, you say that he said that he was in favor of it, but it was kicked upstairs and it was turned down by people upstairs because of political pressure, or words to that effect?

Mr. HAVENICK. We were not against the proposal; we were in favor of it. It was when it got upstairs that politics took over.

Mr. BURTON. OK. Thank you.

Mr. WILSON. Were you surprised by Mr. Skibine's answer?

Mr. HAVENICK. No. Actually, I had really always thought that Mr. Skibine was very sensitive to the needs of the tribes and sympathetic to the project.

Almost everyone we had met at the Bureau of Indian Affairs thought that this was an excellent project, because what was happening in this deal was that you were taking three Indian tribes and putting them together in a business proposition which had really never happened before, and you were throwing into the mix a non-Indian group of people, and they felt that each of the groups could learn from the others and that there was a certain degree of business acumen that the non-Indian group would bring to the table and there was a certain knowledge of the Wisconsin area that would be brought together by the Native Americans.

So everyone who ever heard of this idea, until we were turned down, to the best of our knowledge, thought it was terrific. They also thought it was terrific because it was taking land that the State had already designated as Class III gaming land. The dog track is there. The dog track exists, and people could argue for the next 18 years over whether or not there should be a dog track or whether they have to drive past the dog track, but the dog track is a fact of life; it's there and it exists.

And it was taking that dog track, which had a terrific location, but we were precluded from going into that business—and I think someone made reference to the fact that we couldn't get local approval so we went to the tribes as our way of getting the casino. You cannot get local approval in Wisconsin, because casino gambling is not legal for anyone but Indian tribes under IGRA.

Under the compacts of the tribes, there are three ways the tribes can have gambling. No. 1 is on their reservations; No. 2 is on land taken into trust prior to 1988, which was prior to the enactment

of IGRA; and the third is land subsequently taken into trust, which is what this fell under.

So we always believed that the State and the Governor who signed the compact contemplated that there would be off-reservation gambling in Wisconsin or they never would have signed the compacts as they were.

Mr. WILSON. You brought up an interesting issue there, and it was the one that we have discussed a little bit with the previous panel, and it was the one involving expansion of casinos in the State of Wisconsin, and I'd like to take just a second and try and get as far as we can with that.

A statement was played on one of the monitors here, and it was a campaign statement by Governor Thompson that indicated that he was against the expansion of gambling in Wisconsin. In your view, was the proposal, the application to take land into trust, an expansion of gambling in Wisconsin?

Mr. HAVENICK. No. In our view, off-reservation gambling was permitted under the compacts so long as the total number did not exceed the total number that were permitted under the existing compacts. And every time Governor Thompson—and he is very careful about his use of words in gambling and expansion—we do not feel that this constitutes an expansion of gambling, we feel that it actually is a contraction of gambling, because instead of having a Class III dog track and three more Indian casinos, there would just be one instead of the potential for four.

Mr. WILSON. Let me just ask you a question, because I think some simplification is in order here. Under the current compacts in the State of Wisconsin, the three tribes that are participants in the dog track application—the Lac Courte Oreilles, Red Cliff, and the Mole Lake-Sokaogon—how many casinos are they allowed under the current compacts?

Mr. HAVENICK. Under the current compacts, each one of the tribes is allowed to have two casinos, so they can have a total of six among the three tribes.

Mr. WILSON. And there is already the existing dog track, so that could be seven gambling facilities in the State of Wisconsin.

Now my understanding is that if the application had been approved, the tribes would have foregone the right to a second casino, which would have meant that they would have each had potentially one casino and the dog track application, so instead of seven total facilities, there would have been a total of four gambling facilities in Wisconsin; is that correct?

Mr. HAVENICK. That is exactly correct.

Mr. WILSON. So just trying to characterize this whole discussion we've had so far, is it fair to say that there would literally have been a fairly significant reduction in the number of casinos in the State of Wisconsin if this application had been approved?

Mr. HAVENICK. Yes, if you wanted to say that you were against the expansion of gambling, there are currently 17 casinos operating in Wisconsin. This really would have reduced that number by 3—17 operating. There would be more permitted, but it would be almost a 20 percent reduction in the total number of casinos, yes. And I don't think that would be construed to be an expansion.

Mr. WILSON. And I was going to ask you, that seems to be very consistent with not only Governor Thompson's statements but with the intent of the statements as well. He seems to have indicated he doesn't want more casinos in Wisconsin.

Mr. HAVENICK. That is correct.

Mr. WILSON. I'd like to return for just a moment or two to the points you raised about Terry McAuliffe, because there were some things brought up there that may not be understood by everybody.

I have a copy of your prepared statement here. And you mentioned here a term, "Delaware North." It says—you put in quotes, "I got Delaware North's Indian casino project killed, the one that would have competed with you." Do you have an understanding of what the reference to Delaware North is?

Mr. HAVENICK. Yes, I do.

Mr. WILSON. If you could, just given your hindsight; explain the significance of Delaware North in the Hudson Dog Track application.

Mr. HAVENICK. Delaware North had a significance in the campaign. What had happened was that in November 1994, we received the approval from the Department of the—the Bureau of Indian Affairs in Minneapolis that the land be taken into trust.

We called the BIA—we, someone in my office—and were told that it generally takes 30 days to get an approval once you have gotten the approval out of the regional office. Also, to the best of our knowledge, and the person on the phone from BIA, there had never been an overturning of a regional office recommendation on this subject.

So what had happened was, a gigantic propaganda and lobbying campaign was begun against us by the tribes that did not want the additional competition. And this lobbying campaign included disparaging us by calling us other names and alluding to other things that we may have done. It extended to everyone; it extended to the Federal Government, it extended to the local government of Hudson, because we got the O'Connor letter, which I think will probably come up at some point, from the Freedom of Information Act, by requesting the city of Hudson to turn over all of the documents they had involving this to us.

And we found, through that, that there was direct involvement and collusion of the St. Croix Chippewa with the Hudson City Council and it was coming in over the Hudson City Council's fax machine. And I don't think that's government in the sunshine, but that was what, in fact, was being done.

Mr. WILSON. Is it fair to say then, from your perspective, there were a great many misrepresentations made about the proposal at the time of the consideration in 1995?

Mr. HAVENICK. Yes, there were. And I believe Terry McAuliffe was misled by the people who were making the misrepresentations.

Mr. WILSON. And in many respects it seems that some of the opposition that perhaps was stated at the time might have been influenced by a number of the misleading statements made. Is that your understanding of what happened?

Mr. HAVENICK. That is my understanding and belief, because we filed the application in October 1993, and it took until November 1994 to get the approval from the Minneapolis office.

We had gone through every rule and every hoop and every procedure that the BIA had for an IGRA application. During that time, there was opposition from local people. It was read, it was digested by the BIA, and it was discounted.

And I'd like to point out one other thing just as an aside. Secretary Babbitt said in his testimony in the Senate that Governor Thompson was irrelevant as far as his reaching his decision. So I think I'd just like to clear up the record on that.

But we have followed every rule, and these people had had 14 months in which to object or make any economic studies or whatever they needed done, and nothing had come up that the BIA found to be not insurmountable. It was after the approval from Minneapolis that we were just hit with this firestorm of lobbying and political innuendo and everything else.

Mr. WILSON. Just finishing up on the matter of your conversation with Mr. McAuliffe, prior to your seeing him at the fund-raiser you described, did you have any reason to believe or did you know whether Mr. McAuliffe had any involvement in the Hudson Dog Track matter?

Mr. HAVENICK. I had no reason to believe that he did. And up until really almost the end, we felt that the merits of our case were so strong that this whole thing would be decided on its merits and that politics would never get involved in it.

Mr. WILSON. So it sounds like it's fair to say that his candid statement came as a great surprise to you.

Mr. HAVENICK. A very great surprise, yes. Hearing that, I knew the person responsible was very surprising.

Mr. WILSON. I'd like to put up, if we can, an exhibit. It's in the book in front of you exhibit 317. It is a memorandum to Jennifer O'Connor from David Myers.

[Exhibit 317 follows:]

MEMORANDUM

To: Jennifer O'Connor

From: David Meyers

Date: June 6, 1995

Re: Wisconsin Dog Track

Jennifer, I spoke with Heather Sibbison regarding the status of the Wisconsin Dog Track announcement. Interior will make an announcement in the next two weeks. At that time, they are 95% certain that the application will be turned down. She explained that there is significant local opposition. Much of the opposition, however, is a by-product of wealthier tribes lobbying against the application. Therefore, they still want to receive public comment in making a fair determination regarding the application.

Nonetheless, she stated that they will probably decline, without offering much explanation, because of their "discretion" in this matter. She asked that if you have any feedback please call her with your thoughts.

Finally, she asked that this information be kept quiet because it is not public information yet.

EOP 064250

Mr. HAVENICK. What number is it?

Mr. WILSON. It's exhibit 317. It takes me a long time to leaf through these things as well. I'm lucky I have one pulled out. This is a memorandum from Jennifer O'Connor to David Myers dated June 6, 1995, regarding Wisconsin Dog Track.

Now, just by way of information, Jennifer O'Connor and David Myers both work for then-Deputy White House Chief of Staff, Harold Ickes. And I wanted to turn your attention to the second paragraph, but before I do that I'll say the second reads: "At that time they are 95 percent certain that the application will be turned down." And then in the second paragraph it reads: "Nonetheless, she stated that they will probably decline without offering much explanation because of their discretion in this matter."

I wanted to get your sense of the declining without much explanation. Have you ever seen this memo before?

Mr. HAVENICK. Yes, I did.

Mr. WILSON. When did you first see the memo?

Mr. HAVENICK. I saw it about 3 months ago. On one of the documents—we have a lawsuit against the Bureau—the Department of the Interior that is currently going on in Madison, WI. And the Department is very slow in getting documents to us. I don't think this committee would understand that you don't get documents when you ask for them, but we have a tremendously difficult time getting any documents.

Mr. WILSON. I don't mean to cutoff anybody but we've got some experience in slow receipt of documents, but please continue.

Mr. HAVENICK. As they dribble out—and the White House is particularly slow in producing documents in the lawsuit. But as these—as these—and I know you have no experience in that but I'll just tell you that as an expert witness. I did see this though, about 3 months ago. It was one of the documents that was produced under a request that we had made. Probably fourth request, but yes.

Mr. WILSON. And when you saw this sentence, "They will probably decline without offering much explanation," how did you feel?

Mr. HAVENICK. I felt that they really understood what had happened. I felt that they really understood that the current local opposition, that means opposition that was existing at this time in 1995, was manufactured by the opposition. The local opposition was manufactured by them, the Federal opposition was being manufactured by them. Because prior to November 1994, no one really seemed to care much about what was happening with this application. Not people in Wisconsin or—other than some of the local people and that they understood that this was all part of this bigger campaign. But nonetheless they were going to turn it down anyway. They were not going to do what was right.

Mr. WILSON. Now, the memo that we have or that we are looking at right now is from one member of Harold Ickes' staff to another member of Harold Ickes' staff, and it states at the very beginning, that there had been a conversation with Heather Sibbison and that's how the information was transmitted to Harold Ickes' office. Were you surprised to see that Heather Sibbison, who worked in Secretary Babbitt's office, was telling people in Deputy Chief of

Staff Harold Ickes' office that they will decline without offering much explanation.

Mr. HAVENICK. At the time that I saw this memo, which was 3 months ago, I was not surprised to see that because I—I have no proof myself, but I believe that politics was the reason that we were turned down.

But I would have been very surprised to have seen this memo at the time that it was written. I felt the merits of our case were so strong and that the Department of the Interior was really above political type things and that this would never enter into anyone's consideration.

Mr. WILSON. I'd like to turn from that memo and if we could put up on the board a Presidential directive. It's marked exhibit 350–1 in the book of exhibits in front of you, Mr. Havenick, if you could please turn your attention to that.

[Note.—The exhibit referred to may be found on p. 61.]

Mr. HAVENICK. Could I get that number once more?

Mr. WILSON. Yes it is exhibit 350–1. 350.

Mr. HAVENICK. Yes.

Mr. WILSON. This is a memorandum. It's titled "Government-to-Government Relations with Native American Tribal Governments," dated April 29, 1994. And I'd like to turn your attention to section B in this memorandum, and I'll read it for clarity in the record.

It states, "Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals."

Now, bearing in mind you're not a tribal government or associated with one but you're a close observer of the whole Hudson Dog Track application process, did what you saw in that process have any bearing or relation to this Presidential directive that we've just looked at?

Mr. HAVENICK. What we saw in that process was 180 degrees opposed to the directive.

Mr. WILSON. And how so?

Mr. HAVENICK. There was never any consultation with the tribes. There was never any attempt to resolve whatever may have been a problem with the application. As late as early June, we were told by the Department people, George Skibine and Mr. Hartman, that the application was proceeding along and that there may be a couple of questions, one of which was the parking lot, which we'll get into later, but that those economic issues really are handled by the National Indian Gaming Commission. And the economic issues are not normally handled by the Department of the Interior and that if there were any problems, we would be notified. And none of us was ever notified as to any deficiencies in the application.

Mr. BURTON. Would the counsel yield? I just want to make sure I understand that. You were told that you would be notified if there were any problems?

Mr. HAVENICK. Yes, we were.

Mr. BURTON. And there was no notification ever forthcoming?

Mr. HAVENICK. No, sir. The first communication that we got that there was a problem was the July 14th letter.

Mr. BURTON. Thank you.

Mr. WILSON. Just referring again to the memorandum in Harold Ickes' office with information communicated by Ms. Sibbison that they will probably decline without offering much explanation, how does that square, if at all, with the Presidential directive that we were discussing?

Mr. HAVENICK. I would think that is diametrically opposed to the Presidential directive. And that would show an utter disregard—in my opinion it shows an utter disregard on her part, and the other people who were a part of that communication, to the essence of what is asked for in this directive.

Mr. WILSON. The memo that we were looking at the June 6th memo, was drafted about 6 weeks before the application was ultimately denied. At that time had anybody from the Department of the Interior ever identified anything that would be considered a potentially fatal defect in the application?

Mr. HAVENICK. No, they had not.

Mr. WILSON. To your knowledge, had anybody ever told the chairman of the Lac Courte Oreilles, the Red Cliff, the Mole Lake-Sokaogon or any of their representatives that if you don't fix problem X by date Y, we are going to reject your application?

Mr. HAVENICK. No, they had not.

Mr. WILSON. On the other side of this question had the Department of the Interior ever sent the opposite signal, had they ever communicated that the application was going to be approved?

Mr. HAVENICK. Yes, they had.

Mr. WILSON. And if you could very briefly, and I stress briefly, provide a couple of highlights of what you know about what was communicated to you as far as approval.

Mr. HAVENICK. Yes. On May 17th, there had been a meeting with Mr. Duffy and the tribes and I was there and Paul Eckstein was there. After that meeting we went down to Mr. Skibine's office and Mr. Skibine and Mr. Hartman were there. And we had just gone over the general precepts of what was involved in the application and they told us that there was nothing—nothing in it that was fatal and everything was moving along smoothly.

And we then had another meeting, I believe on May—either at the end of May or beginning of June, with Mr. Skibine and Mr. Hartman again, at which time there was a question about the parking lot and there was a question about a few other things. There was a question about some land that had made it appear as though the property were landlocked, but what in effect had happened was that we had given land to St. Croix County to build that four-lane highway and the deed was not shown in the papers that were put in. But the road is contiguous to the property and that was cleared up. But we were told that there was nothing that was fatal to the application and in fact it was moving along and we would be notified.

Mr. WILSON. OK. I'm down to my last 2 or 3 minutes, so I am going to start talking quickly and I apologize. I am going to read you a passage from a document that we just recently received and I would like to have your views on it very briefly. If we could put

up on the screen exhibit 335–1, please. Again that's in the book in front of you, Mr. Havenick, at 335.

And if you'll turn your attention to the second page it states: "We are primarily concerned about our ability to show that plaintiffs were told about and given an opportunity to remedy the problems which the Department ultimately found were outcome determinative. Area Directors are told to give applicants an opportunity to cure problems and it will be hard to argue persuasively that applicants lose this opportunity once the Central Office begins its review. The administrative record, as far as we can tell, contains no record of Department meetings or communications with the applicant tribes in which the Department's concerns were expressed to plaintiffs. These communications may have occurred, but they simply are not documented in the record."

In a one-word area, yes or no, does this representation comport with what you know about what happened with the dog track application?

[Exhibit 335–1 follows:]

United States Attorney's Office
Western District of Wisconsin

February 14, 1996

Attorney/Client Communication

Privileged

MEMORANDUM FOR SCOTT KEEP, OFFICE OF THE SOLICITOR

From: David E. Jones, AUSA

Subject: Analysis of Litigation Risks in Sokaogon, et al. v. Babbitt, et al.

This responds to your request that litigation counsel provide a brief analysis of the litigation risks in Sokaogon, et al. v. Babbitt, et al., No. 95-C-659-C.

1. **Substantial Potential for Burdensome Extra-Record Discovery.**

In our February 2 hearing on the discovery motions, Judge Crabb's questioning indicated strongly that she would deny our request to limit discovery to the administrative record. She stated outright that "if this were a non-APA case, plaintiffs would easily have demonstrated a reasonable basis for the discovery they seek here" and she asked "What's a plaintiff to do when there is some evidence that outside influences may have affected an agency's decision." She also appeared to believe that the White House, through Harold Ickes's office, exerted influence over the Department, an allegation that plaintiffs pressed by observing that Secretary Babbitt did not provide an affidavit denying his alleged statement that Ickes had ordered the Department to deny the application on July 14, 1995.

A decision allowing extra-record discovery is therefore highly probable, and such a decision would create a difficult precedent affecting not only the Department but also every controversial agency decision. We can expect that the following individuals will be deposed: John Duffy, George Skibine, Michael Anderson, Heather Sibbison, Donald Fowler of the DNC, and perhaps Harold Ickes and Secretary Babbitt. (Note: Ickes has not been noticed by plaintiffs to date and Babbitt's initial notice of deposition has been withdrawn by plaintiffs.) We can also expect burdensome document requests and interrogatories, such as requests for a list of all persons who contacted the Department during the review of the plaintiff tribes' application.

2. **Section 465 Defense Will Not Prevent Remand.**

We do not believe that a defense based on 25 U.S.C. § 465 will prevent the Court from ordering a remand to remedy alleged defects in the § 2719 process. At most, a § 465 defense precludes the Court from ordering the Department to take the land into trust. But this defense will not constrain the Court from ordering a remand if it finds that the Department did not satisfy the consultation requirements imposed by § 2719, particularly given the factual circumstances of this case.

We understand the Department's view that it first reviews an application under § 465 before engaging in the § 2719 analysis, but the record in this case shows that the sequence was reversed: the Department received the Area Office's § 2719 recommendation, and began its review of same, in November 1994, while the

EXHIBIT
335-1

Department did not receive the § 465 package from the Area Office until April 1995. Opposing counsel have pointed out this timing, and the Department's final decision letter of July 1995 can also be read as indicating that the § 2719 process occurred before the Department broadened its range of considerations under § 465.

The consequence of our factual posture is that the Court could reasonably remand this case with an order that the Department reconsider, as a threshold matter, its § 2719 analysis. Such an order would inhibit the Department's ability to dispose of future applications on § 465 grounds without reaching the § 2719 factors, as future litigants could point to a precedent establishing specific, threshold consultation requirements in these types of decisions.

(2) 3. **Alleged Defects in the § 2719 Process Are Problematic.**

Now that we have reviewed the administrative record in greater depth, we have determined that the alleged problems with the § 2719 process are significant. We are primarily concerned about our ability to show that plaintiffs were told about and given an opportunity to remedy the problems which the Department ultimately found were outcome-determinative. Area Directors are told to give applicants an opportunity to cure problems, and it will be hard to argue persuasively that applicants lose this opportunity once the Central Office begins its review. The administrative record, as far as we can tell, contains no record of Department meetings or communications with the applicant tribes in which the Department's concerns were expressed to plaintiffs. These communications may have occurred, but they simply are not documented in the record. The second, and related, problem is that the Department (3) appears to have changed in this case its past policy of requiring "hard" evidence of detriment to the community. The plaintiffs will therefore argue that they had no notice, either through past policy or through direct Departmental communication, that the "soft" concerns expressed by local officials would jeopardize their application. (4) Finally, the record shows that there was no consultation with the State, in contravention of § 2719.

In sum, the Court could take these problems and reasonably conclude that the Department should reconsider the application and provide the plaintiffs with "meaningful" consultation. The risk, of course, is that the Court could also specify what it means by "consultation," throwing further impediments in the Department's future review of these types of applications. These risks would be avoided through a voluntary reconsideration, which plaintiffs could obtain anyway with a new application.

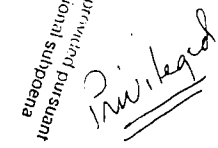
4. **Settlement Preserves Department's Flexibility in Defining Scope of § 465.**

Finally, we understand that the Department is examining how it should exercise its § 465 discretion in light of the Eighth Circuit's recent decision. To have a chance of winning this case, litigation counsel will need to argue aggressively that the Department has extremely broad discretion, both substantively and procedurally, when it considers an application under § 465. This litigation position may not, as we explained above, be dispositive of all the issues before the Court. At the same time, this position may be inconsistent with wider Departmental goals. It may therefore

EXHIBIT 335-2

increase the Department's policy flexibility if this case were eliminated as an influence.

As you know, we need to move quickly on this opportunity for settlement before the Court reaches a decision on the discovery motions. Please advise us if you need any additional information.



Mr. HAVENICK. Yes, there was no communication.

Mr. WILSON. Just for the record, I know this is a Department of Justice analysis of the case in this particular matter. My time is running out. I'd wanted to ask you, we are having witnesses this afternoon—it's very quick, we didn't expect that—one of the witnesses that will testify is Ms. Nancy Bieraugel. My understanding is that Ms. Bieraugel attempted to enter into a business deal with the Hudson Dog Track. Is that correct or false?

Mr. HAVENICK. That is correct.

Mr. WILSON. Could you provide a fairly brief indication of what that deal was?

Mr. HAVENICK. Yes. The general manager of the track told me that she was—she's in the water business, bottled water or some kind of water business and she was attempting to sell water to the track. We do not control the concessions at the track. That's controlled by a company called Ogden, and we have no control over where any of those supplies come from. I do believe that Ogden did not buy the water from her.

Mr. WILSON. So it's fair to say that you rejected her advances in terms of this proposed business deal?

Mr. HAVENICK. Well, my wife is here, so I would not phrase it—yes, that is correct.

Mr. WILSON. I have no further questions for now.

Mr. BURTON. The gentleman yields back the balance of his time. Unless any colleagues have any——

Mr. WAXMAN. Mr. Chairman, I want to make a point just for the record that the document that was just used was an attorney-client—there is an attorney-client issue with that document and the Members should be aware of that.

Mr. BURTON. Attorney-client privilege—that document was turned over to the committee and because it was turned over to the committee we feel that we have a right to utilize that document.

Mr. WAXMAN. Mr. Chairman, just on that point so we can be very clear about it, that document was turned over to the committee. No question about that. This document now has been put into the public record. But this document represents the attorney's views to the Department of the Interior, which was the client. And this litigation has been going on for several years, and it may be your judgment to put in documents that may be prejudicial to ongoing litigation against the Department of the Interior, but this is the kind of document that does reflect the attorney's opinion to a client and it was put in without the client's concurrence.

Mr. BURTON. I understand that the Department of the Interior is drafting a letter to the committee asserting attorney-client privilege over this document, that I referred to in my opening statement today, that the committee will have questions about it, and that it has already been included in the record pursuant to the second and third unanimous consent request adopted today and was not objected to by anybody on the committee.

And so the minority has a copy of the letter that the Interior officials have represented to my staff as a draft. However, it was signed and not stamped "draft."

Let me just say for the record this committee takes its responsibility seriously.

Mr. KANJORSKI. Mr. Chairman.

Mr. BURTON. Even though we may have many disagreements the committee has often——

Mr. KANJORSKI. Mr. Chairman.

Mr. BURTON. If the gentleman would let me conclude. Even though we have many disagreements the committee has often come together on issues which impact the Congress as an institution. If the Secretary of the Interior thinks that a lawyer in the Office of the Solicitor can write a letter asserting attorney-client privilege over a document that the Department admitted in its January 12, 1998, letter to the committee was not subject to any privilege vis-a-vis the Congress, he is mistaken. The Secretary must assert a countervailing claim of executive privilege which trumps Congress' oversight responsibility.

When then Chairman Dingell subpoenaed certain EPA litigation documents, President Reagan, whether right or wrong on the law, had the courage to sign the letter asserting the privilege in Chairman Dingell's review of environmental litigation involving ongoing criminal investigation.

Let me also say that this last minute behind the scenes maneuvering makes little difference. The document in question was included in the record pursuant to the second and third unanimous consent requests today. Furthermore, members of the committee under the committee's document protocol are permitted to use any document, except classified documents, during the hearing.

Some members of this committee have asserted that the Department's decision was correct. Others disagree. The American people should be the ultimate arbiters of the truth and should have as much information as possible. I believe the American people have a right to know. I think it's in order to allow this to be in the record and it has so been inserted in the record.

Now do you have a point of order?

Mr. KANJORSKI. Yes, Mr. Chairman.

Mr. BURTON. The gentleman will state his point of order.

Mr. KANJORSKI. In reliance, when the chairman asks unanimous consent to include certain documents in the record, I was not aware of the fact that it was in contest, that having a lawyer-client privilege, and I think the Chair takes extraordinary advantage of this committee. Henceforth, let it be known that when you ask for unanimous consent for the admission of anything I can no longer trust you, and I would like to have it appear in the record that I have a blanket objection.

Mr. WAXMAN. Will the gentleman yield?

Mr. KANJORSKI. I certainly will.

Mr. BURTON. There has been no assertion from the Secretary of the Interior regarding privilege on this document. Now, you can question my integrity——

Mr. KANJORSKI. No, you gave us justification because you offered it by unanimous consent and there was no objection that it was a matter of being put to the record and anybody was in consent. I did that as a Member of the Congress of the United States, and a member of this committee, respecting the fact that the chairman would never abuse the minority of this committee, or the majority of this committee, by making an offer unless it had been patently

agreed upon by all parties concerned that it was legitimately to be entered into the record as a matter of course under unanimous consent. You have abused this committee's respect for unanimous consent.

Mr. BURTON. You are not stating a point of order. But let me say that the minority counsel was advised of the documents that we put in the record. If you want to take issue with somebody, take issue with your minority counsel for not informing you. It's not a point of order anyway.

Mr. WAXMAN. Mr. Chairman? Mr. Chairman.

Mr. BURTON. Regular order has been called for and will be granted.

Mr. WAXMAN. Point of order.

Mr. BURTON. The gentleman will state his point of order.

Mr. WAXMAN. I want the record to be clear that the minority counsel was not informed, to my knowledge, that the unanimous consent was for depositions to be put in the record but not this particular letter.

I don't think it was appropriate to put it in. But that is your decision. I wanted to make note for the record that that document was considered attorney-client privilege and you have used it. So that point should stand on the record.

And I withdraw my point of order, which I did not make properly.

Mr. BURTON. The minority counsel did consult with the majority counsel and they agreed that the Interior Department had waived that privilege. Well, I'm not going to get into a big long debate about it.

Mr. WAXMAN. That is not correct.

Mr. BURTON. You may interrupt it in any way that you want. It is in the record. It is going to be utilized by the committee. You have a motion before us. You're recognized for 5 minutes on your motion.

Mr. WAXMAN. Mr. Chairman, as I said in the beginning of this hearing, I think it's appropriate for us to get the testimony of the witnesses who have information to give us to get a complete understanding of the facts of this episode in Wisconsin. And I have requested that a number of witnesses be brought to the committee, to be invited to come to the committee. I made a motion that is now pending that we issue invitations or subpoenas to Governor Thompson, Congressman Gunderson, the State representative from the area, Sheila Harsdorf, and Hilda Manuel, who is the person in the Department in charge of making the determination of the application.

I think we ought to have those people brought before this panel so we can get the full information. There was even a dispute this morning. Mr. Souder raised the question of what Governor Thompson meant and when he meant it, when he said he opposed it and whether he did oppose it at the time when it would have been appropriate for him to oppose it and whether he supported it at one time or opposed it at another. These are very legitimate questions and the best way to get answers to them is to have the witnesses before us.

I requested it of the chairman. He has not seen fit to grant the approval of these witnesses to be brought before us, and now I make a motion and hope to have support on a bipartisan basis that we have these witnesses included so that we can have a full and complete transcript and record in this hearing so that we can get all the information and not just part of the information.

Mr. BURTON. Has the gentleman concluded?

Mr. WAXMAN. I yield back the balance of my time.

Mr. BURTON. The gentleman yields back the balance of his time. Let me say that we listened to the requests from the minority. We weighed that very seriously. Mr. Waxman, for my majority members as well as minority members, asked for eight minority witnesses. It would have required two extra days of hearings, according to our staff. This would easily have taken a lot more time than we wanted to dedicate to this part of the investigation.

I'm sorry, did you have a comment, Mr. Lantos? Is that analogous to the comment that you made to the independent counsel when he was here? You do not have the floor, Mr. Lantos, and I would expect you, as a member of this committee to abide by the rules. I will recognize you and give you your time and I will keep my mouth shut, and when I have the time I will respectfully request that you keep yours shut.

Now, we have granted the minority four witnesses. Mr. Skibine, Michael Anderson, Nancy Bieraugel, and Fred Havenick. This is far more generous to the minority than they ever were when we were in the minority. Ever. And so I respectfully request that the minority members join with me in defeating this motion.

The motion is now before us. All those in favor of the motion will signify by saying aye. Those opposed will signify by saying no. In the opinion of the Chair the noes have it.

Mr. WAXMAN. I request a roll call vote.

Mr. BURTON. The gentleman from California requests a roll call vote and a roll call vote will be granted. The clerk will call the roll.

The CLERK. Mr. Burton.

Mr. BURTON. No.

The CLERK. Mr. Gilman.

[No response.]

The CLERK. Mr. Hastert.

Mr. HASTERT. No.

The CLERK. Mrs. Morella.

[No response.]

The CLERK. Mr. Shays.

[No response.]

The CLERK. Mr. Schiff.

[No response.]

The CLERK. Mr. Cox.

Mr. COX. No.

The CLERK. Ms. Ros-Lehtinen.

[No response.]

The CLERK. Mr. McHugh.

[No response.]

The CLERK. Mr. Horn.

[No response.]

The CLERK. Mr. Mica.

Mr. MICA. No.
The CLERK. Mr. Davis of Virginia.
Mr. DAVIS OF VIRGINIA. No.
The CLERK. Mr. McIntosh.
[No response.]
The CLERK. Mr. Souder.
Mr. SOUDER. No.
The CLERK. Mr. Scarborough.
[No response.]
The CLERK. Mr. Shadegg.
Mr. SHADEGG. No.
The CLERK. Mr. LaTourette.
[No response.]
The CLERK. Mr. Sanford.
[No response.]
The CLERK. Mr. Sununu.
Mr. SUNUNU. No.
The CLERK. Mr. Sessions.
[No response.]
The CLERK. Mr. Pappas.
Mr. PAPPAS. No.
The CLERK. Mr. Snowbarger.
Mr. SNOWBARGER. No.
The CLERK. Mr. Barr.
[No response.]
The CLERK. Mr. Miller.
[No response.]
The CLERK. Mr. Waxman.
Mr. WAXMAN. Aye.
The CLERK. Mr. Lantos.
Mr. LANTOS. Aye.
The CLERK. Mr. Wise.
[No response.]
The CLERK. Mr. Owens.
[No response.]
The CLERK. Mr. Towns.
[No response.]
The CLERK. Mr. Kanjorski.
Mr. KANJORSKI. Aye.
The CLERK. Mr. Condit.
[No response.]
The CLERK. Mr. Sanders.
[No response.]
The CLERK. Mrs. Maloney.
[No response.]
The CLERK. Mr. Barrett.
Mr. BARRETT. Aye.
The CLERK. Ms. Norton.
Ms. NORTON. Aye.
The CLERK. Mr. Fattah.
Mr. FATTAH. Aye.
The CLERK. Mr. Cummings.
Mr. CUMMINGS. Aye.
The CLERK. Mr. Kucinich.

Mr. KUCINICH. Yes.
The CLERK. Mr. Blagojevich.
[No response.]
The CLERK. Mr. Davis of Illinois.
[No response.]
The CLERK. Mr. Tierney.
[No response.]
The CLERK. Mr. Turner.
[No response.]
The CLERK. Mr. Allen.
[No response.]
The CLERK. Mr. Ford.
[No response.]
Mr. BURTON. The clerk will report the tally.
The CLERK. Mr. Chairman, there are 8 ayes and 10 nays.
Mr. BURTON. The motion fails. The gentleman from California is recognized for 30 minutes.
Mr. COX. Mr. Chairman, I wonder if I might be recognized out of order to make a unanimous consent request.
Mr. WAXMAN. Reserving the right to object, I think you had better clear it with us first and let us go on with our time.
Mr. COX. I ask unanimous consent that the written testimony, as it may be submitted timely to this committee, of the witnesses that it was proposed we hear from just now be included in the record.
Mr. WAXMAN. Reserving the right to object, I don't understand the request, and it is our turn to ask questions, so why does he not just temporarily pull it back, and we will try to find out what he wants part of the record that is not already part of the record.
Mr. BURTON. I assume objection is heard.
Mr. Waxman, you are recognized for 30 minutes.
Mr. WAXMAN. Mr. Chairman, first of all let me point out to the Members for their information, it is laughable, this idea that Mr. Skibine, Mr. Havenick and Mr. Anderson, who are going to testify in this hearing, should be considered our witnesses, since they are so essential to any kind of explanation as to what went on in this casino issue. I regret that we were denied again any opportunity for getting a fair hearing out of the 4 days that this committee is devoting to this issue.
I was away during Mr. Havenick's testimony. I was at another meeting. Mr. Kanjorski acted as the ranking member under those circumstances. I yield to him 10 minutes at this time to begin the questioning for our side, and then I will ask whatever questions I may have.
Mr. KANJORSKI. Mr. Havenick, you originally started this proposition, as I understand it, with another Indian tribe; is that correct?
Mr. HAVENICK. Yes, we did.
Mr. KANJORSKI. Why was it that that Indian tribe did not continue as an applicant?
Mr. HAVENICK. What had happened was that Indian tribe had approached us in June 1992, to form a joint venture and have the land under the tract taken into trust, and then we could have——
Mr. KANJORSKI. You did not approach them, they approached you?

Mr. HAVENICK. They approached us, yes.

Mr. KANJORSKI. This was never an original thought of yours to convert this to a reservation-type casino; it was really the Indians' idea?

Mr. HAVENICK. It was the idea of the St. Croix Chippewa Management Co., a management company of the St. Croix Chippewa. This management company approached us to see if we would be interested in entering into a joint venture with them, where we would apply to have the lands under the tract taken into trust, and then we would be able to offer the other games that the tribes were allowed to offer that we cannot. We worked with that tribe from June 1992 until December 1992.

During that time we grew to not trust the management company of that tribe. You, or I believe one of the Democratic Members today recited a story about how Indian tribes had been ripped off on the slot machines, and that they could have bought the slot machines in 3 months for what they paid leasing fees for for about 3 or 4 years. The St. Croix was one of the tribes that was involved in that. We did not like that business tactic.

The second thing that was done by that management company was that they owned the land around the casino, so there was—the casino was the hole in the doughnut, but they controlled the access to the casino. We did not like the way that company did business. We value our pari-mutuel licenses very, very highly, the ones in Florida, the ones in Texas, and the ones in Wisconsin. We every year have to submit applications in which we've got to show every person, group, and entity with whom we have any type of business arrangement. We were fearful of having a business arrangement with the St. Croix group, as it was then constituted, that it could hurt our licensing, the renewal of licenses in other States.

Mr. KANJORSKI. It took 18 months to carry on this type of negotiation and discover that?

Mr. HAVENICK. No. It took from June 1992 until December 1992. It took 6 months for us to realize that these were not the people we wanted to be in bed with.

Mr. KANJORSKI. It was not the fact that they would not agree to the terms of the conditions and the splitting of profits?

Mr. HAVENICK. No, it was not. They were really the ones who came to us with the terms and the conditions and everything else.

Mr. KANJORSKI. Their terms were better than what you eventually gave the tribes, the three tribes, or were they worse?

Mr. HAVENICK. The terms of the deal with the St. Croix group, the group was getting 40 percent, the non-Indian group was getting 40 percent, and the tribes were getting 60 percent. We were then going to split that between the two of us. But our reason for not dealing with——

Mr. KANJORSKI. So you would have ended up with a lesser profit if you had gone with the first deal than if you went with the second deal?

Mr. HAVENICK. Our reason for not going with the first deal was that we did not want to deal with the people who were involved in the first deal. It had nothing to do with the economic terms. It had to do with the——

Mr. KANJORSKI. That was just coincidental, that you would not get as big a profit with that deal if you went with that deal?

Mr. HAVENICK. That is just coincidental.

Mr. KANJORSKI. I see. The Indians, the Four Feathers group, the three tribes that we had here this morning, they came with the terms of this agreement and said what they wanted, or did you propose what the split was going to be?

Mr. HAVENICK. We made the proposal to the second group of tribes. It was our——

Mr. KANJORSKI. So you set the terms, that you were going to get a greater profit by dealing with this new set of three Indian tribes than you would have ended up with the first Indian tribe?

Mr. HAVENICK. We did not really want to deal with the first group. It really was not clear as to who would get what percentage of the 40 percent because that deal was not finalized. We were the ones who went to the other group of tribes.

Mr. KANJORSKI. In your testimony, it sounded like you were hanging around Wisconsin and you saw these poor Indian tribes out there, and you just felt a tremendous compulsion to go out and make sure that they made more money. And it had nothing to do with the fact that you were stuck with this dead dog track that was losing money, and you were able to take that and convert it by getting all the money invested paid back to you by the agreement, $39 million, even though you had reduced the tax rate valuation on the tract to $2.2 million from $2.5 million. And you also made a fairly sweetheart deal on the parking lot, where you were able to convert that into a revenue stream without having to put that into the trust fund. Is that correct?

Mr. HAVENICK. That is not correct. I am sorry if you misunderstood what I had said earlier. Just so that you understand how this all happened, Congress passed IGRA, and IGRA gave the tribes the right to have gaming. We are not permitted to have gaming. There is a case in California called the *Cabazon* case. In the *Cabazon* case the Supreme Court of the United States ruled that the Indian tribes were allowed to conduct any type of gaming which was legal within the borders of the State, which was not criminally prohibited.

Mr. KANJORSKI. I understand that. You are making a point, though.

Mr. HAVENICK. The point is that when Justice Crabb ruled that the lottery legalized slot machines, that for all intents and purposes killed the dog track. I never went to the tribes and told them that I was going to be their benefactor. I said that we each had something good to bring to the table, as any good business deal should have.

Mr. KANJORSKI. Why didn't you just offer the dog track up for sale and let the Indian tribes get together and buy the dog track and put a casino in it?

Mr. HAVENICK. Because they did not have the means to buy it.

Mr. KANJORSKI. But the first Indian group would have had the means, because they had a management company.

Mr. HAVENICK. I can't speak for the first Indian group but just for the deal that actually came to fruition. The tribes just did not have the economic wherewithal to do that.

Mr. KANJORSKI. I have reacted to the idea, and I don't particularly like these arrangements, as you heard this morning when I talked to the three Indian tribes. I don't think they struck a very good deal. Now that you have cleared that up, that they didn't really strike a deal, you told them what terms you would take them in as partners on, so you really put the deal together.

Mr. HAVENICK. No. What happened was I went to the tribes with a proposal.

Mr. KANJORSKI. And they accepted it?

Mr. HAVENICK. No, they did not accept it. It took us almost 14 months to negotiate the agreement. I am not sure if you have seen the agreement or not, but the agreement is a very intricate, complicated agreement. They negotiated among themselves and with us, because there are other questions that the tribes had to ask each other.

Lac Courte Oreilles has more members than Red Cliff, so Lac Courte Oreilles could have said, well, let us do this on a per capita basis. The concept was everybody would be fair and equal to each of the partners. The tribes would be fair and equal to each other and to us, and we would be fair and equal. But we didn't go to these tribes and say, "Here is a deal, take it or leave it, or we are going down the street."

Mr. KANJORSKI. But it wasn't quite that you put this deal together to take care of the welfare of these poor Indians; is that right? That is not what you want the record to reflect, is it?

Mr. HAVENICK. No.

Mr. KANJORSKI. This was a business proposition, taking a losing asset and converting it to a very profitable asset?

Mr. HAVENICK. Congress through IGRA had given the Indians an economic tool, and we were saying to them, you——

Mr. KANJORSKI. I participated in that legislation, and I never anticipated people from Florida coming up and making deals in Wisconsin to make casinos.

I think you have heard that expression a lot in this committee. I think we probably should spend our time to see whether or not this whole act has been abused by the gaming forces of this country who are really using Indians as shells.

Mr. HAVENICK. That was not the case in this deal, sir.

Mr. KANJORSKI. Let me ask you, you are a businessman. You said that you engaged in activities with both political parties. Have you ever contributed funds to the Democratic National Committee?

Mr. HAVENICK. Yes, I have.

Mr. KANJORSKI. Have you ever contributed funds to the Republican National Committee?

Mr. HAVENICK. Yes, I have.

Mr. KANJORSKI. Have you ever contributed funds to any other candidates on a State and local level?

Mr. HAVENICK. Yes, I have.

Mr. KANJORSKI. Can you tell us whether or not you have contributed what amount of funds in the current year, or say since 1992, how many contributions have you politically made to both parties, to all candidates that you can recall, you and your wife and your business associates and allied corporations?

Mr. HAVENICK. I would guess about $50,000.

Mr. KANJORSKI. Maximum?

Mr. HAVENICK. Yes.

Mr. KANJORSKI. That is all the corporations in Florida? That is all the gaming operations throughout the country?

Mr. HAVENICK. I believe so, yes.

Mr. KANJORSKI. I think I have some information here that Governor Thompson's contributions may have exceeded $12,000 in just 2 years. Did he receive more than 25 percent of the contributions that you made?

Mr. HAVENICK. He may have, yes.

Mr. KANJORSKI. I see. I yield back.

Mr. WAXMAN. Thank you very much, Mr. Kanjorski, for yielding back.

Mr. Havenick, I am pleased to see you today. Let me start off by saying that you are a businessman. I do not think you have done anything wrong. I do not think you have done anything improper. You are a successful businessman, you are trying to make some money out of a failing dog track, and there is absolutely nothing wrong with that. What I want to do is to explore with you where we are and the reason this issue has now come before this committee, which ordinarily does not have oversight over dog tracks, Indian gaming, or decisions at the Department of the Interior.

Just so I can get some kind of time line on all of this, as I understand it, in 1986 gambling was illegal in Wisconsin; is that right?

Mr. HAVENICK. Yes, sir.

Mr. WAXMAN. They changed the law in 1987, and they adopted an amendment to the constitution and permitted a narrow exception to gambling, which included dog track betting?

Mr. HAVENICK. In 1987, it permitted dog racing, horse racing, snowmobile racing, and the lottery, or I believe the lottery at the same time.

Mr. BARRETT. At the same time, separately?

Mr. HAVENICK. Separately, but it was all in 1987.

Mr. WAXMAN. In 1988, just to get the chronology, in 1988 your company, HAH Enterprises, first unveiled its dog track in Hudson; is that correct?

Mr. HAVENICK. That's correct.

Mr. WAXMAN. In 1989 a lot happened. You were granted a license for this facility, but then the mayor who supported it was recalled for supporting this dog track; is that right?

Mr. HAVENICK. That is correct.

Mr. WAXMAN. The next big event is, in 1991 the dog track opened, and as you testified, at the same time an Indian casino began operating near the dog track. The result was that the track began to lose money; is that correct?

Mr. HAVENICK. That is correct.

Mr. WAXMAN. In 1992, according to your testimony, you knew that you could not compete with the Indian casino. You knew that because State law forbids casino gambling, you faced severe legal hurdles in building your own casino. So you came up with the idea of a business deal with an Indian tribe, and if you can persuade the Department of the Interior to approve a transfer of your land to a tribe, your land ceases to be subject to State laws. You could then build a casino on it.

And you approached the nearest tribe, which was the St. Croix Chippewa, with this idea. They are about 30 miles away. They are interested in pursuing your concept. You announced an agreement in principle with them in August 1992?

Mr. HAVENICK. There is one correction that I would make in that. That is that the St. Croix Chippewa approached us. We did not approach them. But everything else you said was correct.

Mr. WAXMAN. OK. But you are now proposing to go into business with the St. Croix Chippewa Tribe?

Mr. HAVENICK. Correct.

Mr. WAXMAN. And run a casino on your property?

Mr. HAVENICK. Correct. It would no longer be our property, but yes.

Mr. WAXMAN. There is local opposition. Hudson city council adopts a resolution opposing the casino. In December there is a local referendum, narrowly passing in Hudson, 51 to 49, but loses by a 2 to 1 margin in Troy, which surrounds the dog track on three sides. The St. Croix Tribe pulls out in December 1992. Is that all accurate?

Mr. HAVENICK. The only thing is that it was a mutual termination between us and the St. Croix.

Mr. WAXMAN. At this point you are searching now for a new tribal partner. In August and October 1993, you find three tribes, the three we heard from this morning. They are all much further from the site than the St. Croix Band, but nevertheless, you engaged then in a partnership with these three tribes?

Mr. HAVENICK. We began negotiating in February 1993.

Mr. WAXMAN. In early 1994, you enter into a service contract with the city of Hudson. At the same time, however, local opposition begins to mount. Over 3,100 Hudson area residents sign a petition to Governor Tommy Thompson and Secretary Babbitt opposing the casino. The supervisors of the town of Troy voted unanimously against the casino. Is that correct?

Mr. HAVENICK. The 3,100-person petition is subject to question. No one ever verified the signatures. I believe most of them were not from Hudson.

Mr. WAXMAN. In 1995, the local opposition intensified, and in February the Hudson city council voted against the proposal. On March 30 members of the State legislature, led by Sheila Harsdorf, the Republican representative from Hudson, wrote in opposition to the casino. In April the Republican Congressman for the area, Steve Gunderson, and the Democratic Attorney General, Jim Doyle, both wrote in opposition. In May, Congressman Tom Barrett of this committee joined them. In June, Governor Thompson and Senator Feingold also announced their opposition. During this period the lobbying campaign begins in earnest.

Mr. HAVENICK. No, it actually began in earnest in January 1995.

Mr. WAXMAN. The lobbyists for the opponents of the casino began to have their contacts with the Department and the White House. In response to this mounting opposition you hired two lobbyists, Paul Eckstein, who was Secretary Babbitt's former law partner, and Jim Moody, a former Congressmen. These lobbyists are the only ones to meet with Secretary Babbitt. The Department finally

announced its decision in July and then you filed suit in September. Is all that correct?

Mr. HAVENICK. All that is correct.

Mr. WAXMAN. OK. Now, you have been facing a lawsuit on this issue for a couple of years now?

Mr. HAVENICK. Yes, we have.

Mr. WAXMAN. You have maintained that there were procedural improprieties but also there were political improprieties, and that the political improprieties, according to the affidavits that have been filed, have to do with the statement by Mr. Eckstein as he relates what Secretary Babbitt had to say.

Today he testified——

Mr. HAVENICK. That, among others.

Mr. WAXMAN. OK. Well, what others there might have been, today for the first time you mentioned Terry McAuliffe. When you say that he approached you to help stop the casino, why wasn't that in any of your previous affidavits? Who just joined you at the table, by the way?

Mr. FRIEBERT. My name is Robert Friebert. I am one of the attorneys in the matter.

Mr. WAXMAN. I hope we have that for the record.

Mr. HAVENICK. Could you just repeat that?

Mr. WAXMAN. Today is the first time you mentioned the anecdote about Terry McAuliffe. That never appeared in any other place. It was not in any of your affidavits; it was not in any of your public statements, private statements, statements in the litigation. Why not?

Mr. HAVENICK. I have never given an affidavit in the litigation. I am not really a party in the litigation, but it was never mentioned, also because of lawyer-client privilege.

Mr. WAXMAN. How was it lawyer-client privilege?

Mr. HAVENICK. It was work product. It was work product with the attorney.

Mr. WAXMAN. You related in your testimony that you had a social conversation with Terry McAuliffe and that he came over to you and said, I took care of your problem. It turned out he was wrong. He thought you were on the other side.

Mr. HAVENICK. He didn't know I had a problem until I said something to him. And then he said, I took care of that. He didn't come over and volunteer that he had taken care of that, because I do not think before that he knew I had anything to do with Wisconsin.

Mr. WAXMAN. It didn't sound like he knew much about what he was talking about when he talked to you at the time, either.

Mr. HAVENICK. He knew about Hudson and the problem, and he knew that the thing had been killed. Yes, he did.

Mr. WAXMAN. But he thought—from your testimony it sounds like you were telling us that he thought you were happy with what he had done.

Mr. HAVENICK. He did, because he had been misled. I said that there was this massive propaganda and lobbying campaign to discredit us, and he had been told that the non-Indian applicant in the Hudson casino case was another company, not us, so he was misled, too.

Mr. WAXMAN. Why wasn't this ever mentioned before? This is central to your lawsuit. Why is this the first time you are raising an anecdote about a lobbyist or fund-raiser who was trying to take credit for something, and then it looks like, according to your statement, "I told Terry that it was my project, that I was the one who owned the track in Hudson, and his face dropped. He clearly was in shock; he said little else." It sounds like he was taking credit with you, and it turned out he was telling you he had opposed you.

Mr. HAVENICK. This is a strategy in the lawsuit that, as you have said, has been going on for a very long time, and on advice of my attorney, this is what we have done.

Mr. WAXMAN. Why? You haven't said anything about this until now. How did you decide——

Mr. HAVENICK. Who would I have said something to? That was the strategy.

Mr. WAXMAN. Tell me the strategy. Not to talk——

Mr. HAVENICK. That is the work product.

Mr. WAXMAN. The whole basis of your lawsuit is that there was political interference. Isn't that right?

Mr. HAVENICK. No, that is not correct.

Mr. WAXMAN. Isn't it partly right?

Mr. HAVENICK. There are two parts to it. But the main basis of our lawsuit is that there were procedural errors in the way in which the application was handled, and that there was a failure to consult with the tribes, as we found out even more information about today.

The second part is that there were political improprieties, yes.

Mr. WAXMAN. OK. As to political improprieties, that is the reason we are having this hearing.

Mr. HAVENICK. Yes.

Mr. WAXMAN. As to political improprieties, it has never been mentioned, although it would be helpful to your cause to have mentioned, that there was some reason that Terry McAuliffe might have been involved in this issue.

Mr. HAVENICK. It was our strategy that we handle the lawsuit in the way in which we are handling the lawsuit.

Mr. WAXMAN. Maybe your attorney can tell us what the strategy is. You had a strategy to say that Babbitt did something improper, you had a strategy to say that the tribes maybe were not included that were partners of yours in some of these discussions, you had a strategy to claim that there was political pressure, and one of the evidences you give to us today is an anecdote that you never brought forward to indicate that there was some further support for your contentions. That seems to me very peculiar, that it hasn't been brought up before.

Mr. FRIEBERT. Do you want to hear a response, Mr. Waxman?

Mr. WAXMAN. Yes, that is why I am asking the question.

Mr. FRIEBERT. Mr. McAuliffe's name has come up in the litigation through documents that have been filed in the Federal court. We have been attempting to obtain permission to take his deposition. As I'm sure all of you here understand, in the context of litigation, there is a great value to surprise. That is all I care to say about it.

Mr. WAXMAN. Didn't you violate that strategy of surprise by announcing it today?

Mr. FRIEBERT. The question was asked and he answered. I don't have to respond to that, as to what you asked as to why the——

Mr. WAXMAN. Speak into the microphone.

Mr. FRIEBERT. You asked a question as to why it wasn't responded to or mentioned previously. Today is today. The past is history.

Mr. WAXMAN. OK. So in other words, you changed your strategy. You were going to surprise Mr. McAuliffe because you were going to ask for his deposition, so you didn't want to mention that he was under——

Mr. LANTOS. Point of order, Mr. Chairman.

Mr. FRIEBERT. What is the point?

Mr. LANTOS. The attorney has not been sworn in and he was testifying.

Mr. FRIEBERT. Thank you.

Mr. WAXMAN. I would like you to stay because you are here, and you have already, with the consent of your client, come forward.

What I find peculiar is that you had a strategy to surprise him, and suddenly today the strategy changed by announcing that Mr. McAuliffe was taking credit for something. Of course, it turned out he was taking credit for something that was the exact opposite of what he thought he was doing, because it looked like he was pretty embarrassed.

Mr. Havenick, you complained to your friend Jerry Berlin about the denial of the Hudson application; did you not?

Mr. HAVENICK. Yes, I did.

Mr. WAXMAN. Did you ever tell him what you said about Terry McAuliffe to us today? Are you aware—have you ever told him about Terry McAuliffe?

Mr. HAVENICK. No, I have not.

Mr. WAXMAN. Why not?

Mr. HAVENICK. I met Terry McAuliffe on August 15, 1995. We filed the lawsuit in the western district of Wisconsin on September 15, 1995. From September 15, 1995, until today, the lawsuit continues. I have been operating under the strategy of the lawsuit from that time forward. There was only a 4-week time period between the meeting with Mr. McAuliffe and the filing of the lawsuit.

Mr. WAXMAN. I don't know the facts in your case, but I have been around Washington and politics a long time, and I do know that there are lobbyists and fund-raisers who are anxious to say things that please people, especially people who may well contribute to the campaigns. It sounds like Mr. McAuliffe was trying to take credit for something with you, and then he was shocked to find out that what he was pumping up as to his good actions was exactly the opposite of what you would have wanted to be the result.

Mr. HAVENICK. I really can't speak for why he did it, you know, but it had the opposite effect of whatever effect he thought it would have on me.

Mr. WAXMAN. I went through that long time line with you, and I thought it was important to do it, because whether the tribes approached you or you approached them, you were the big partner in this whole thing because you are the one paying most of the bills.

What I think is important is that the real struggle is between you and the local community. You want to build a casino in Hudson because it is close to Minneapolis. It would be very lucrative to have a casino right there. The local community opposed a Las Vegas casino in their midst.

There is nothing wrong with having a dispute like this. It is just a lot different than the picture that I see being painted, where it was as if you had all the merits on your side, there wasn't an argument on the other side, and, lo and behold, what should have been a slam dunk gets overturned by the Department of the Interior. How could that be, except through skullduggery? And I think that is a picture that is not an accurate one.

Mr. HAVENICK. May I answer that?

Mr. WAXMAN. Sure.

Mr. HAVENICK. What we are saying is that we went through every rule and regulation that IGRA required in order to take the land into trust. Included in that were statements from the local community about the impact of the proposed casino on their communities. The statements that were sent in by the city of Hudson and by St. Croix County that are part of the record that led to the decision from the Bureau of Indian Affairs in November 1994 supported the casino. There was no finding of detriment to either the city or the county in the official records that were transmitted to the Bureau of Indian Affairs.

Mr. WAXMAN. How do you explain, despite all that, that the Governor came out against it, the Attorney General, the Congressman, the State representative, they all came out against that?

Mr. HAVENICK. I will tell you what we say. We say that, No. 1, we are not sure that the Governor came out against it. The Governor came out against an expansion of gambling, which we discussed before, as to whether this really constitutes an expansion or doesn't constitute an expansion.

With regard to all of the other people who came out so strongly against it, all of that occurred after January 1995. In the 14 months prior to that, there was no congressional opposition to the proposal. Under the normal time established that is taken in these things, there was no governmental opposition. In fact, there was governmental approval, there were governmental agreements for services.

None of this happened until this massive campaign began in January 1995, at which time the Interior Department reopened the hearings on this, or reopened whatever they would call it on this, without telling the applicant tribes, for a 6-week period after a meeting on February 8th with the Minnesota delegation. And it was during this time that unbelievable amounts of money and unbelievable lobbying and unbelievable political influence was used to kill the project. Nothing happened prior to the——

Mr. WAXMAN. I am being advised that what you just said was factually incorrect as to the time and when this issue became a reopened issue. But if I am to accept what you are saying, the local Congressman, the State legislator representing the area, the Attorney General, all were part of a conspiracy then to come out against your proposal at a particular time, when before you didn't think

they were against it? And you are still not sure whether Governor Thompson was ever against it?

Mr. HAVENICK. I'm not saying there was a conspiracy against us, I am saying that there is a massive lobbying and misinformation campaign that was produced against us. And it was the result of that massive campaign, where incidentally, Patrick O'Connor also in his diary says that he met with Terry McAuliffe about this project. But it was during that time that the opposition pulled out every plug in their attempt to stop the casino from coming into being.

Mr. WAXMAN. When did you have your lobbyists working on it, at the same time?

Mr. HAVENICK. No. Our lobbyists started working at probably the end of April. There is a difference in the quality of the lobbying work that was being done.

Mr. WAXMAN. You live in Florida and you gave a contribution to Governor Thompson?

Mr. HAVENICK. Yes.

Mr. WAXMAN. Was that because you were hoping that he would be open to your views on this issue?

Mr. HAVENICK. No. I happen to agree with a lot of Governor Thompson's political views. I have given contributions to people in Nevada; I have given contributions to people in California. I gave a contribution to Senator Cranston in California. I have given contributions in various other States because I believe in what those people are saying.

Mr. WAXMAN. And sometimes they can help you?

Mr. HAVENICK. In most of those, they really cannot help me. It is very rare that they can help me.

Mr. WAXMAN. Those were the smaller contributions?

Mr. HAVENICK. No.

Mr. WAXMAN. Thank you. My time is up.

Mr. SOUDER. I thank the gentleman from California. Since Mr. Cox had taken his 5 minutes, I yield to Mr. Lantos.

Mr. LANTOS. Thank you very much, Mr. Chairman.

Mr. Havenick, I read your testimony which you gave under oath. I would like to ask you to turn to page 2, paragraph 3. I want to give you an opportunity to either explain it or to take it back.

Mr. HAVENICK. I have a different page 2 than you.

Mr. LANTOS. Page 2——

Mr. HAVENICK. I have a bigger one. If you start with the first sentence, I will find it.

Mr. LANTOS. The first sentence of the paragraph says, "It is important to stress."

May I read the relevant statement, and then ask you to either explain or retract? "All decisions on management would be controlled by the tribes."

Do you really want this committee to believe that you as an experienced gambling operator would turn over all management decisions to the three ill-equipped tribes to make all management decisions?

Mr. HAVENICK. We did not think, No. 1, that the tribes were ill-equipped partners. Yes, we were prepared to turn it over to them.

Mr. LANTOS. So you considered yourself a silent partner in this whole venture?

Mr. HAVENICK. No.

Mr. LANTOS. Allow me to finish. Your testimony under oath is that all decisions on management would be controlled by the tribes. That is what your written testimony says?

Mr. HAVENICK. It should say all decisions on management could be controlled by the tribes.

Mr. LANTOS. No, it said, would be controlled by the tribes. Would you read it in your own text? I want you to read it, now, because you have changed it for me.

Mr. HAVENICK. That is correct.

Mr. LANTOS. Could you read it, please?

Mr. HAVENICK. All decisions on management would be controlled by the tribes, that is correct.

Mr. LANTOS. Do you really expect anybody above the age of 6 to believe that you, a multistate gambling operator, who must have some profitable operations, because this surely was an unprofitable operation, would turn over all management decisions to these three tribes? That is what you are testifying to?

Mr. HAVENICK. That is what I am testifying to and that is the truth.

Mr. LANTOS. OK.

Mr. HAVENICK. That is what we were prepared to do.

Mr. LANTOS. I understand.

Now let me sort of walk you through the transaction, in layman's terms. You invested $40 million in the facility, and the moment it opened it started losing money, and the losses ran as high as $7 million per annum. Is that correct?

Mr. HAVENICK. That is correct.

Mr. LANTOS. OK. Now, if I may direct you to your own written testimony again, where I find another remarkable statement, this is paragraph 6.

Mr. HAVENICK. On what page? On page 2?

Mr. LANTOS. Page 2.

Mr. HAVENICK. I have it now.

Mr. LANTOS. Page 2, line 4. "The existing debt on the track, about $40 million, would be paid by the partnership." Now the partnership involves the Indian tribes. "In addition, the same partnership would own and operate the parking lot, though this land would not be placed in trust." Why not?

Mr. HAVENICK. I don't have that in the same paper.

Mr. LANTOS. I am just reading from your testimony.

Mr. FRIEBERT. He said page 2.

Mr. LANTOS. Yes, page 2, the top paragraph.

Mr. HAVENICK. OK.

Mr. LANTOS. "The existing debt on the track, about $40 million, would be paid by the partnership." So you built this facility for $40 million?

Mr. HAVENICK. Yes.

Mr. LANTOS. It is a white elephant. It is losing you $7 million a year. So you now want to recapture your investment, you bring in these tribes that have no resources; you testified to that. They

haven't got a dime. But they will now be responsible for repaying the $40 million?

Mr. HAVENICK. No, they are not responsible for paying—repaying the $40 million.

Mr. LANTOS. No.

Mr. HAVENICK. The entity would be responsible for paying the $40 million.

Mr. LANTOS. Without them you have no entity. What you are saying is—it is such a phony deal, it reeks of phoniness. You have a facility which is losing $7 million a year. You pull in the Indians so you can have a Las Vegas-type casino gambling, hopefully now it will make money and it will pay off the $40 million, and you have the audacity to state in your sworn statement that you are not making any money on it, you are recapturing the investment, which you lost by your poor decision.

Mr. HAVENICK. No. There is a $40 million debt on the facility which would be paid——

Mr. LANTOS. For which you are responsible, before you make the deal?

Mr. HAVENICK. For which we are responsible solely after we make the deal. Only we are responsible as guarantors of that after the deal is made. We bring the tribes into this partnership. The partnership operates the casino. When the casino is operating, there is a payment that is made to each of the three tribes first. The second payment that is made is to the bank, and the third would be a distribution of what is left among the partners.

Mr. SOUDER. The gentleman's time has expired.

Mr. HAVENICK. There is no direct obligation on the tribe.

Mr. LANTOS. It is the ultimate rip-off on the tribes.

Mr. SOUDER. The gentleman's time has expired.

Mr. HAVENICK. May I just respond to that?

I know that you believe that what you are saying is the truth, but the facts that you are relying on are really incorrect.

Mr. LANTOS. Those are your facts.

Mr. HAVENICK. We were looking to rip off nobody. If somebody looks at this under a microscope, and we are prepared to discuss this with anyone, no one is being ripped off. This is a fair and equal agreement among all of us, and it is really unfair to cast it in any other way, because that is not a true reading of the facts.

But there is one other thing that I think is very important here. Even if it were unfair, which it isn't, that is the function of the NIGC. That is not the function of the Interior Department at this point, because it was that Interior Department that let many bad deals go through for the tribes. But this was a very good deal. I believed it was a very good deal when I came in here, and no matter what you say, this was a very good deal. You are misinterpreting the facts.

Mr. SOUDER. Mr. Mica.

Mr. MICA. Thank you.

Mr. Havenick, it is not going to do you any good to try to explain that, because most of the Members from the other side have not been in business and they would not understand that when you are losing money in an operation, you try to find a way to make money

to make it profitable. It is far and above their ability to comprehend that.

You are lucky you were only called, what, an Indian bully, buller, today. You are very fortunate. There have been some other terms used here to describe our witnesses I won't go into. But basically, you are in business.

I want to also preface my questions with the point that I don't support casino gambling. I come from Florida. I have tried to oppose it. I have worked against having a casino in my backyard, or anywhere in Florida, for that matter. It is my personal opinion.

But you are in business to do what? To make——

Mr. HAVENICK. To make money.

Mr. MICA. OK. It is a shocking revelation. What you try to do, then, is to look at an operation that doesn't make money and make it profitable.

Did you drag any of the these Indians kicking and screaming to sign this agreement against their will?

Mr. HAVENICK. No.

Mr. MICA. They would have made money if you had made money; is that correct?

Mr. HAVENICK. They would have made a lot of money, yes, sir.

Mr. MICA. The other thing is you testified you followed all the laws. I wasn't here then, but some of the folks who are here today actually voted for this legislation, which I would have voted against, actually. But you followed all the laws, you hired the expertise, dotted the i's, is that correct?

Mr. HAVENICK. That is correct.

Mr. MICA. I think, in answer to my question, the chairmen of the Indian tribes said they did the same. And then you found out that in fact that you went through this process, and you left off at November 1994, that everything was submitted in proper forms, and that there were some substantial objections at that time?

Mr. HAVENICK. That is correct.

Mr. MICA. Then what took place? Bring me up to the point of the August 15 meeting, when you found out from Mr. McAuliffe that you were going to get hosed.

Mr. HAVENICK. November 15 the regional office recommended that the land be taken into trust, and they then sent their recommendations to the Department of the Interior in Washington. We called the Department of the Interior, just calling and asking the question, how long will it take to get this final approval out of Washington?

In the past there had never been an overturning of a regional office recommendation, so the thought of it being overturned had never entered into our minds.

Mr. MICA. In the past there had never been an overturning?

Mr. HAVENICK. This was the first time one of these regional decisions had been overturned. In January, we started wondering what is happening, and in February we were wondering about what is taking so long. It was attributed to the bureaucracy in Washington. So we said, you know, maybe there is a bureaucracy in Washington.

In March, in the middle of March 1995, Chairman Ackley was in Washington and he was informed at that point that the Depart-

ment had reopened the comment period for our application. Now, I am not sure of this, but I don't think one of those had ever been reopened before, either. I think this was the first time that there had been a reopening.

Mr. MICA. It was supposed to be finalized and then it was reopened?

Mr. HAVENICK. Yes, because what Washington was supposed to do was review the findings of the Minneapolis office. We received a 40-page extensive study of what we had proposed, and they went through all of the various IGRA-related things and they approved it. In general, every other time Washington just stamped it.

Mr. MICA. When was the first time that you heard of the political influence?

Mr. HAVENICK. In the middle of March in 1995, at that point.

Mr. MICA. At that point?

Mr. HAVENICK. Yes. At that point we heard of the political influence, but the tribe sent a letter and they were told that that comment period would end——

Mr. MICA. You testified that unbelievable amounts of money and political influence were used. Could you describe those for the committee?

Mr. HAVENICK. Yes. The opposition, which included Patrick O'Connor, who was a very high-powered lobbyist, went around and through their web of people in both the State of Wisconsin and in Washington, lobbied any public official from the city of Hudson to the State legislature to Congress about this project. Prior to this happening there was virtually no interest at the Federal level in what happened in Hudson, WI, on the dog track application.

They also had a continual barrage of the people at the Department of the Interior to change the opinion, change the opinion. And really, what they were doing was, the entire campaign was forget the law, forget the facts, forget that there is IGRA, forget that you have a fiduciary responsibility to the tribes, rule in favor of our clients. All that is important is that our clients get their desired result. And they used any way that they could in order to do that, even attempting to cast aspersions on us, my family, our company. There were no limits to what they did to kill this project.

But the whole thrust of it was, forget IGRA, forget the law, forget the facts, give my clients what they want, and no one was immune to that lobbying and propaganda effort.

Mr. SOUDER. Mr. Barrett.

Mr. BARRETT. Thank you very much. Mr. Havenick, you testified several times that was the first time that a regional office or local office decision had been overturned, and you may be correct. I don't know. But I have got before me a denial by the Bush administration of the Santee Sioux Tribe's application. Are you familiar with this case?

Mr. HAVENICK. No, I am not.

Mr. BARRETT. OK. Let me just take a minute and maybe I can help you with this one. All we would have to do is change the names and I think it would be quite similar.

In this case the tribe, in partnership with Harvey's Resort Hotel Casino, would purchase certain properties on Council Bluffs, IA, and requested that the property be placed in trust for the tribes.

Documents . . . indicate this is . . . an excellent economic development proposal for the Santee Sioux Tribe. However, the Sac and Fox Tribes, the Governor of Iowa, and members of the affected community have stated their strong opposition to the project.

After several meetings and consultations between and among representatives of the Santee Sioux Tribe, Harvey's Resort Hotel Casino, Central Office Bureau of Indian Affairs officials, and myself, I have decided to deny the request for approval of the land acquisition. The proposed venture would place the Santee Sioux, a Nebraska tribe, in direct competition with the tribes in Iowa.

and that goes on and on.

[The letter referred to follows:]

THE SECRETARY OF THE INTERIOR

WASHINGTON

January 23, 1992

Honorable Daniel Denney, Sr.
Chairman, Santee Sioux Tribal Council
Route 2
Niobrara, Nebraska 68760

Dear Chairman Denney:

I have reviewed the Santee Sioux Tribe's application for preliminary approval of a fee-to-trust conversion of land to be acquired out of state for gaming. The tribe, in partnership with Harvey's Resort Hotel Casino, would purchase certain property in Council Bluffs, Iowa, and has requested that three acres of the property to be placed in trust for the tribe.

The documents transmitted indicate that this may be an excellent economic development proposal for the Santee Sioux Tribe. However, the Sac and Fox Tribes, the Governor of Iowa, and members of the affected community have stated their strong opposition to the project.

After several meetings and consultations between and among representatives of the Santee Sioux Tribe, Harvey's Resort Hotel Casino, Central Office Bureau of Indian Affairs officials, and myself, I have decided to deny the request for approval of the land acquisition. The proposed venture would place the Santee Sioux, a Nebraska Tribe, in direct competition with the tribes in Iowa. I am unable to ignore the interests of the Iowa tribes in favor of those of one Nebraska tribe. In addition, the National Indian Gaming Regulatory Act requires the concurrence of the Governor of Iowa for any such acquisition and, as already noted, the Governor opposes the acquisition.

Unfortunately, I cannot approve your proposed acquisition under the present set of circumstances. However, I wish you success in your efforts to promote and achieve economic development for the Santee Sioux Tribe.

Sincerely,

Mr. HAVENICK. But first of all, they crossed State lines. But in addition to that, there was not a recommendation from whatever regional office, which I would assume would be Minneapolis, approving the project.

Mr. BARRETT. I think there was. I see heads going up and down. Am I correct in saying that the regional office recommended that this be approved?

Mr. HAVENICK. OK. But this was across State lines.

Mr. BARRETT. As was the one here. You objected to the Minnesota——

Mr. HAVENICK. No, no. This was Wisconsin tribes applying in Hudson. The tribes were not brought in from another State, they were indigenous Wisconsin tribes.

Mr. BARRETT. So there is a difference, but again, I am saying this was not totally unprecedented. This was done under the Bush administration. I don't know that anybody is talking about that. But let me move on.

Why do you think—why do you think the tribes opposing the casino contributed to the DNC?

Mr. HAVENICK. I am sorry?

Mr. BARRETT. Why do you think that the tribes opposing the casino contributed to the DNC? That is the whole reason we are here today.

Mr. HAVENICK. Because the tribes wanted to protect their monopoly.

Mr. BARRETT. So they were doing something nefarious?

Mr. HAVENICK. Yes.

Mr. BARRETT. Why did you contribute to Governor Thompson?

Mr. HAVENICK. Because I believe in what Governor Thompson says. I happen to believe in a lot of his programs. I would like them to be administered in Florida. I think Governor Thompson is a fine politician, and I agree with him. I was not trying to get Governor Thompson to change anything. These people were asking that the people who got the contributions from them, they were asking them to ignore the law, ignore IGRA, forget the facts, and rule in their favor.

Mr. BARRETT. But, of course, Governor Thompson has the final say in this, you are well aware of that?

Mr. HAVENICK. I am very aware of it.

Mr. BARRETT. In 1990 you contributed $3,600, and Barbara—is that your wife——

Mr. HAVENICK. Barbara is my wife.

Mr. BARRETT. She contributed $5,000, and Florence——

Mr. HAVENICK. My mother-in-law.

Mr. BARRETT. She contributed $5,000, so $13,500——

Mr. HAVENICK. What was the date?

Mr. BARRETT. July 6, 1990.

Mr. HAVENICK. This project began in 1993.

Mr. BARRETT. I am well aware of that. In 1991, $500 to Governor Thompson, $2,500 to Governor Thompson on November 8, 1991; $500, May 21, 1993. There are several other—Marlene Hecht, is that a relation to you and your wife?

Mr. HAVENICK. No, Florence Hecht is the only relation.

Mr. BARRETT. Again this reminds me of when I was first running for Congress and a group asked me what my definition of a special interest was, and I said someone who contributes to my opponent, because I think everybody in this room believes that their motives—and I think you are sincere, that you think Governor Thompson is a very good Governor, but nobody in this room is ignorant of the fact that Governor Thompson had the last say in this issue, and after the testimony today no one appears to be ignorant of the fact that Governor Thompson appeared to be sometimes saying one thing and sometimes saying another thing.

What is your opinion of what Governor Thompson was saying?

Mr. HAVENICK. I would like to just say two things. In 1990, when the bulk of the contributions were made to Governor Thompson, this issue was not even on the horizon.

Mr. BARRETT. I understand that.

Mr. HAVENICK. Because the Indian gaming did not begin until 1991, and if we could have foreseen that what happened would have happened, we would have acted very, very differently. So there was no attempt on our part to influence Governor Thompson.

Mr. BARRETT. But it is clear that you and your family members have contributed roughly $20,000.

Mr. HAVENICK. Yes, we have.

Mr. BARRETT. And you have had meetings with Governor Thompson to discuss this proposal?

Mr. HAVENICK. Yes.

Mr. BARRETT. What has he told you?

Mr. HAVENICK. He has told us that he is—I believe Governor Thompson is open to see what happens.

Mr. BARRETT. Notwithstanding his earlier——

Mr. HAVENICK. Governor Thompson continues to say that he is opposed to the expansion of gaming, but there has not been a definition of what constitutes expansion, and we contend that this is not an expansion, this is a contraction.

Mr. BARRETT. When you hired Mr. Eckstein, I bet you were one happy guy. Did he tell you what kind of access he had to Secretary Babbitt?

Mr. HAVENICK. I wasn't one happy guy, OK? We were one very unhappy people, because we felt that what was being done to us was that the tribes that were against us were making enormous amounts of money every day that this project was delayed, so we felt that what they were trying to do was, since you couldn't kill it on the merits, they were just going to never give us a decision.

Mr. BARRETT. But then you hired Mr. Eckstein because you thought he was a man who had special access to the Secretary?

Mr. HAVENICK. We felt Mr. Eckstein could get this project back on track.

Mr. BARRETT. You felt he had special access?

Mr. HAVENICK. Yes, we did. Yes, we did.

Mr. BURTON. The gentleman's time has expired. I am not going to take my 5 minutes. I will only take 1 minute, and yield to my colleague from Indiana, so we don't keep him waiting.

I just wanted to restate what I said before. The law requires consultation with the tribe. This tribe, because it was a poor tribe, was not consulted with.

The tribes that had a vested interest in stopping this agreement, that were making $400,000 for every man, woman, and child in the tribe, lobbied, went to a private meeting with lobbyists, and with members of the Department of the Interior. Those who should have been at that meeting or at meetings to talk about the problems with him, to talk about the law, were not, and that was a violation of the law. Tribal meetings that were held were with these major contributors.

And then after these meetings took place and after the application was denied, $350,000, not $500 or $1,000 or $2,500, but $350,000 was given to the DNC. And then the top lawyer at the Department of the Interior and the chief of staff at the Department of Interior go to work for the rich Indian tribe. And then Mr. Collier, one of the two people I just mentioned, carries a $50,000 to $100,000 check over to the DNC from the rich tribe.

Now, I understand what my colleague is trying to do, he is trying to equate your contributions with what has happened. But I think it is ridiculous on the face of it, because I don't think you can compare what happened if you look at that scheme or that series of events with what you were trying to do.

Once again, I want to state my opposition to legalized gambling, but nevertheless, we are not talking about that today, we are talking about illegal use of campaign finances to try to influence policy at the Interior Department.

I yield the balance of my time to the gentleman from Indiana.

Mr. HAVENICK. Could I make one comment, if I could, sir? If you turn to exhibit 302, which is a letter to Chairman Ackley, and look at the last paragraph, it is from John Duffy. The date of that is March 27, 1995. That letter was sent after our applicant tribes found out that the comment period had been reopened.

In that, John Duffy, in the last paragraph, says,

> Please be assured that our commitment regarding the submission of additional information will not delay consideration of other aspects of your application by the BIA's Indian Gaming Management staff. Should areas of concern with the application be identified, you will be so notified,

and we never were.

Mr. BURTON. The gentleman from Indiana is recognized.

Mr. SOUDER. Here we are talking about what looks like, at any rate, the attempt of influence, but successfully buying influence. When you have the former treasurer of the Democratic National Committee repeating the Delaware North charge, which is what the current finance chairman of the Democratic National Committee repeats to you, where you have a Democrat national leader like Don Fowler—you have other things that the chairman and we are looking at as to whether influence was actually bought, not whether there were attempts to buy it. Quite frankly, I think this demonstrates a lot of evils of gambling and power of concentration of Government, because this is what happened when major decisions are made that can then be corrupted by money pouring into both sides. The dangers of gambling are inherent at the State level and corrupting State government as well as the Federal Government.

Nevertheless, we are here looking at whether, in fact, our Government has been corrupted. In connection with the St. Croix tribe,

I got a little confused in the original proposal. It was 60/40, where you were going to do a 20/20 split with the management company.

Mr. HAVENICK. Correct.

Mr. SOUDER. Their management company represents several tribes or just St. Croix?

Mr. HAVENICK. They were just the St. Croix tribe.

Mr. SOUDER. And in the agreement that you proposed that has been turned down, it was, in effect, 75/25?

Mr. HAVENICK. Correct.

Mr. SOUDER. The parking lot agreement, was that part of a collateral agreement vis-a-vis the bank for loan purposes?

Mr. HAVENICK. Yes.

Mr. SOUDER. In effect, you were not doing this as a charitable operation for the Indian tribes, you were in a business arrangement with somebody whose only collateral was the Indian contract; they had no cash in any way, and no property?

Mr. FRIEBERT. That is correct.

Mr. SOUDER. When you switched from the St. Croix tribes to the other tribes, did you anticipate that the St. Croix tribe would turn and oppose you?

Mr. HAVENICK. We thought they might, yes.

Mr. SOUDER. It was not just a money deal, because certainly since you had been turned down, since you spent thousands of dollars on other things, the difference in 5 percent is not that significant.

Mr. HAVENICK. No, not relevant to whether you get it or you don't get it. That is really the key.

Mr. SOUDER. You expressed concerns it might have brought down your dog racing elsewhere. The time of the referendum had passed and it would have been smooth sailing if you had cut the deal with the St. Croix tribe right at the beginning?

Mr. HAVENICK. Probably it would, because it would have just sailed right through.

Mr. SOUDER. Did you state the position as a businessman—you may have run into this in dog racing—did you anticipate the intense opposition of the Minnesota tribe?

Mr. HAVENICK. No.

Mr. SOUDER. Why not?

Mr. HAVENICK. Why did I not anticipate it? Because at the time this was really happening, the Minnesota tribes were also having problems with their management companies, so most of these tribes were so preoccupied with their own internal affairs that they weren't worried about any external affairs. It really wasn't until the end of 1994, that they were in a position where they could start fighting against this. They weren't focused on us at the time. We did anticipate that there would be some opposition, yes, but we didn't think it would take on the character that it did.

Mr. SOUDER. All right.

Mr. BURTON. My time has expired. The gentleman from Indiana will be next in line, if he so chooses.

Mr. WAXMAN. Mr. Chairman, I am recognized for 5 minutes, but I am not going to take the 5 minutes.

I would like to put on the board the chart the chairman just had on the board saying "Hudson Facts" on the screen. Here is Hudson

Facts. It says, The law requires consultation with the tribes. Lobbyists were hired to stop progress. Tribal meetings with big contributors. $400,000 opponents versus $600,000 proponents. $350,000 contributions to Democrats. Duffy and Collier leave Interior to work for Shakopees. Collier carries $50,000 check to DNC on behalf of Shakopees. And the chairman said even a blind person can see there is something wrong. Something is wrong with this.

[Note.—The chart referred to may be found on p. 105.]

Mr. WAXMAN. I want to put up something else, called Tobacco Facts. I want to read from this. The tobacco industry hires former Republican National Committee Chairman Haley Barbour as their lobbyist. Tobacco industry gives $8.8 million to Republican party since 1995. The three biggest contributors to the Republican party were all tobacco companies. Speaker Gingrich and Senate Majority Leader Lott insert a secret provision into the budget bill that gives the tobacco industry a $50 billion tax break. With no discussion on the merits, the largest special interest tax break in history is passed.

[The information referred to follows:]

TOBACCO FACTS

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Mr. WAXMAN. Now, I raise this issue because look at what this committee is ignoring, not what it is reviewing, but what it is ignoring, when we talk about the influence of money, special interest decisionmaking, but elected officials who receive contributions.

I don't know about this case, I hope to hear all sides on it, and I am not convinced that these Hudson Facts are accurate and that they were the determining influence. But I am convinced that these tobacco facts are accurate, and that the money from the tobacco industry dictated the result of the $50 billion give-away led by the Republican leaders who received the money.

My question is, and I have said it in the past and I am going to say it again, why aren't we looking at that, something like that? And the reason we are not is because this committee's investigation is not to be taken seriously, because it is all partisan. It is all partisan politics. And the only purpose of this investigation is not to get to the facts about campaign abuses, but to try to smear Democrats, sometimes with some information that sounds like it might have some credibility, oftentimes with information that is fabricated.

I want to yield now the rest of my time, and of course he will have time if he wants on his own to—Mr. Kucinich—to question the witness.

Mr. KUCINICH. If I could say at the outset, Mr. Chairman, Mr. Waxman, that in sitting in on the many hours of testimony today, I think the American people have to see these proceedings as further proof of the need for a broad-based campaign finance reform. When we are here and listen to the amount of money that goes into the political process, just from one witness, to try to—whether it is for the purposes of giving money to nice people because you like them or giving money to people who are in positions of power because they can make decisions on your behalf, the fact of the matter is that the American people are not really enjoying the same kind of benefits that go to people in positions of power in the business community and other areas.

So I—and that—you know, we can't proceed further unless we recognize there are 187 signatures on a petition right now, in the House, to release campaign finance legislation and give the House a chance to vote on it. These hearings prove the need for that.

You know, a businessman who is—you, sir, I am sure you are a very honorable person and probably a very good businessman. And I could imagine that a very good businessman who is also an honorable person might be a little bit perplexed if he gives about $50,000 of his money and can't get a decision in his favor. I am sure that is a shock to you. But the American people who do not contribute money to campaigns because they may not have that kind of money, they worry about getting decisions in their favor, too. So you know how the people of this country may feel.

Now, I would like to go on to some questions here.

Mr. HAVENICK. Could I just say one thing?

Mr. KUCINICH. I have some questions I would like to ask.

Mr. HAVENICK. Can I just answer one thing that you said, please, sir?

Mr. KUCINICH. Sure. The gentleman is certainly free to respond.

Mr. HAVENICK. We did not give $50,000 to anybody to influence this decision. We did not give $1 to anyone to influence this decision.

Mr. KUCINICH. I heard you testify when Mr. Barrett questioned that your total contributions to the political system may have totaled about $50,000.

Mr. HAVENICK. Since 1990.

Mr. WAXMAN. If I may reclaim my time, how can you be so pure to tell us that you gave money and you did it for noble purposes, but when somebody else gives money, and they advocate a position contrary to yours, they must have done it for nefarious purposes?

Mr. HAVENICK. That's not what I said.

Mr. WAXMAN. I find that very troubling and a little disingenuous.

Mr. HAVENICK. I feel that the other side gave the money to have people disregard the law. There is a difference.

Mr. WAXMAN. You gave money, and you got to meet with the Governor. You gave money to a lobbyist who got to meet with the Secretary of Interior. Ordinary people don't get that opportunity.

Mr. HAVENICK. I never met the Secretary of Interior.

Mr. WAXMAN. Your lobbyist did.

Mr. HAVENICK. Pardon me?

Mr. WAXMAN. Your lobbyist met with the Secretary of the Interior.

Mr. HAVENICK. He did. But I don't believe that people shouldn't have the right to lobby people. But I am saying to you——

Mr. WAXMAN. How about contribute to them?

Mr. HAVENICK. I think they have a right to contribute to people, but I am saying that it is the quality of the lobbying that was done in this case that produced a grievous wrong. This is not ordinary lobbying. This is not just trying to get somebody to hear my case. This is telling somebody, ignore IGRA, ignore the law, ignore the facts. It's a very different kind of thing.

Mr. WAXMAN. And you lost, and you don't like it.

Mr. BURTON. The gentleman's time has expired.

The gentleman from Indiana has 5 minutes on his own time now.

Mr. SOUDER. I believe one of the greatest hungers in America right now is for integrity, and they don't see it out of public officials or a lot of times in private business or a lot of different places. One of the things as we look at campaign finance reform and what this committee is trying to do is, rule No. 1 is if you can't follow the current laws, what good will it do to pass new laws? And if you don't have people of integrity, and if you have people who are going to bend and abuse it, it won't do us any good to pass more laws.

And I happen to be willing to speak out against my own party, as I did on the tobacco issue, because I don't understand how that got in the bill. I don't understand why we weren't told. And our leadership ought to be rebuked when they do that, too. And that is not the jurisdiction of this committee, but it is something that should be looked at.

I believe that, in general, we probably need to look at various kinds—I sponsored a number of bills, but any type of finance reform we have to look at needs to include not only the business side, but the labor side, the soft money, and what we do with million-

aires and billionaires who decide they are going to dump all their money in, right now that is constitutionally protected.

This is not an easy issue to answer, but what we are looking at is following the current law and whether, in fact, it has been abused from calls from the White House to Air Force One and back to the White House. Was that just nominal checking, or was it trying to bully? Were there decisions made by staffers under Secretary Babbitt in return for their getting a future job? The Secretary has admitted he has lied. We just don't know which ones are lies. This is serious stuff, and being trivialized for political purposes is wrong. It is not about gambling. I am more than happy to have hearings on gambling because I oppose gambling. I oppose dog racing, and I oppose casinos. What we are trying to sort out here is what happened in this process.

One of the things that is really interesting to me is why a former treasurer of the Democratic National Committee, Patrick O'Connor, put out letters saying that you were part of Delaware North and then a Patrick—or Terry McAuliffe down in Florida used the same charge to you that it was Delaware North. Why do they think you were Delaware North or that dog track was?

Mr. HAVENICK. I have no idea why they would.

Mr. SOUDER. Is Delaware North a fairly sizable organization? When one of the memos has a reference to them being tied to——

Mr. HAVENICK. In the Patrick O'Connor letter, the original Patrick O'Connor letter of either April or May 1995, Patrick O'Connor said that we were Delaware North, and that, you know, that Delaware North is very close to Senator Alfonse D'Amato, who I think is a very fine man but I've never met. And you know how the—I believe the President feels about Alfonse D'Amato or how we feel about Alfonse D'Amato.

So the point of tying Delaware North into this was to say that we were a Republican company that was seeking this transfer of the land into trust. That was in one Patrick O'Connor letter.

There's another Patrick O'Connor letter, which is your exhibit 334, and if you turn to the second paragraph there, it says, unquestionably, tribal governments will need to call upon the Clinton administration and the President himself to assert leadership—leadership and assist tribes through the difficult 1996 budget process and to help fend off attacks on tribal gaming. As witnessed in the fight to stop the Hudson Dog Track proposal, the office of the President can and will work on our behalf when asked to do so.

Mr. SOUDER. Did the Delaware North charge come up anywhere other than those two Patrick O'Connor letters?

Mr. HAVENICK. Yes.

Mr. SOUDER. Where else?

Mr. HAVENICK. It came up with Senator McCain.

Mr. SOUDER. How did it come up with Senator McCain?

Mr. HAVENICK. The lobbyists against us said that we were Delaware North, and Delaware North had—there is a—Delaware North had had a checkered past. And there was an incident in Arizona that involved a predecessor company to Delaware North. Senator McCain, coming from Arizona, would be particularly sensitive to that issue. So hearing that Delaware North was involved in this,

we get an extremely negative reaction out of Senator McCain toward us.

Mr. SOUDER. The—do you know—and you are testifying under oath, because we will be able to ask Patrick O'Connor—when we ask him why he was floating this, you don't know where it came from; there is nobody associated with you in any of your other business events, so on, that is with Delaware North? The reason this is important is it looks to me like Terry McAuliffe got his information from Patrick O'Connor.

Mr. HAVENICK. He probably did. I—there is nothing—first, there is nothing in our business associations that in any way tie us to Delaware North other than that Delaware North, in our opinion, is a fine company who was involved in greyhound racing also, among other things. And we do belong to an association, a trade association, with them. We have no business relationships with Delaware North.

But there was a definite attempt to say that this was Delaware North. Delaware North also owns two dog tracks in Wisconsin, so there was a way to muddy the waters as to who the real owner was except for the fact that all the people had to do was contact Madison and get a list of the owners.

Mr. SOUDER. Because if Terry McAuliffe got it from Patrick O'Connor, it proves that muddying the water worked pretty well. In other words, by tying it in with D'Amato and putting a political angle to this, it was rattling around at the very least, and with very top officials. The finance director for the President of the United States is picking up scuttlebutt, not based on fact, probably because they have played this as a political case.

Mr. HAVENICK. It helped overturn a regional decision of the Bureau of Indian Affairs and got people to disregard the facts, disregard the law, and rule for the other side. It was very important.

Mr. SOUDER. Thank you.

Mr. BURTON. The gentleman's time has expired.

Mr. Kucinich.

Mr. KUCINICH. Thank you, again, Mr. Chairman. And, again, from the standpoint of trying to take an overview of some of the things that have transpired here today, I will again insist that we ought to start considering the implications of campaign finance just based on the testimony today, the need for reform.

I want to tell the chairman, Mr. Burton, when you presented your Hudson facts, one of the things that we know as a matter of fact, No. 5, with respect to people who left Interior to work for Shakopees, I want you to know that bothers me. I look at that, and I say there is something wrong there.

We spend a lot of time, though, in these hearings trying to prove that people are bad. But people actually may be decent people, but the system is bad. People are thinking that they have to buy access. That is wrong. And people trying to buy access, that is wrong. Decisionmaking that would be based on contributions, that is wrong and illegal. And people working for the Government one day and then turning around and working for groups that—or working for a company that would be regulated the next day by them previously, that is wrong.

So it should be said that there are those of us who are aware that there is something wrong with this system. We are charged to get to the facts of the particular matter that is before us.

Mr. Havenick, you have testified today that I think it was on August 15, 1995, that Mr. McAuliffe made some remarks to you that this committee could only take to mean that somehow there was an awareness and—within the fund-raising machinery of a decisionmaking process that was and should have been the sole province of an administrative body in the Federal Government. When you learned that, the day that you learned that, the day that he told you that, did you tell anyone else?

Mr. HAVENICK. Yes, I did. I told——

Mr. KUCINICH. Who did you tell?

Mr. HAVENICK. Mr. Freibert.

Mr. KUCINICH. And who else did you tell?

Mr. HAVENICK. He was the only one.

Mr. KUCINICH. Did you make a decision not to mention at any other time to anyone when you first told him; did you decide you couldn't mention that to anyone at any time, you were going to save that information?

Mr. HAVENICK. No, I had also told that to Mr. Goff, Mark Goff, that I knew that.

Mr. KUCINICH. Mark Goff is who again?

Mr. HAVENICK. Mark Goff is a political consultant who works with us, as a public relations person.

Mr. KUCINICH. But earlier you and your attorney both stated, if I am correct, that you did not mention this conversation you supposedly had with Mr. McAuliffe in your litigation against the Department of Interior because you wanted to save it up for its surprise value; is that correct?

Mr. HAVENICK. Originally I—he was so in shock by what happened, and I was so in shock by what happened, and I knew that there were serious errors that came to get to this terrible decision that I wanted to see if he was going to try and do anything or direct me as to what we should do next.

Mr. KUCINICH. But didn't you really decide to save this? I mean, we are here, we are 2, almost 2½ years later where we are in committee. I just heard this for the first time. So did you—and you testified there is some strategic work than just kind of saving this fact and bringing it out at a certain time.

Mr. HAVENICK. We had on September 15, 1995, which was 1 month later——

Mr. KUCINICH. Right.

Mr. HAVENICK [continuing]. We filed the first lawsuit. And at that point, the strategic decision was made not to do anything at that time, OK, that it was not the proper time to use that information.

Mr. KUCINICH. Is it not true that in June 1995, Judge Crabb in Wisconsin ruled against your side in various ways in a published decision, giving the Department of Interior a significant victory at the time by denying your motion for summary judgment and granting a protective order to the Department?

Mr. HAVENICK. That is 1996, but it is correct.

Mr. KUCINICH. 1996.

Mr. HAVENICK. OK.

Mr. KUCINICH. OK. That was an important decision; was it not?

Mr. HAVENICK. Yes.

Mr. KUCINICH. And you and your side were not particularly happy with that decision, I take it?

Mr. HAVENICK. No, we were not.

Mr. KUCINICH. You moved to get that order reconsidered?

Mr. HAVENICK. We did.

Mr. KUCINICH. Now, in moving for reconsideration, your side filed new documents, including affidavits, to try to get the judge to reconsider a decision?

Mr. HAVENICK. We did.

Mr. KUCINICH. And the lawyers tried to show Judge Crabb that the Department had been corrupt; were they not?

Mr. HAVENICK. Yes.

Mr. KUCINICH. And—but you still did not testify as to your conversation with Mr. McAuliffe when your side moved for reconsideration?

Mr. HAVENICK. That's correct.

Mr. KUCINICH. And you still say that your side decided to save your story about Mr. McAuliffe even though you were trying to get the judge to reconsider her opinion?

Mr. HAVENICK. That is correct.

Mr. KUCINICH. Now, Mr. Havenick, I know that when lawyers are trying to get a judge to reconsider a major decision, they provide all the evidence they can that the decision was wrong. I find it very unusual for a lawyer in such a significant case to save up evidence when they are filing such an important motion. And I find it very unusual that this story about Mr. McAuliffe surfaces today even though it never came up in what can only be described as very contentious litigation with the Department when you were trying to get the judge to reconsider her decision for the Department. Would you like to comment on that?

Mr. HAVENICK. Yes, I would. There are three lawsuits that are currently happening because of this grievous wrong. The first is in the Federal court, the second is a State lawsuit, and the third is a slander suit that we have filed against the O'Connor law firm for alleging that we are mob-related family, people.

In the State lawsuit, we uncovered a tremendous amount of information that was then presented to Justice Crabb. The—we were never given the opportunity to take the deposition of Terry McAuliffe. At the time that that deposition would have been taken or will be taken, it was intended that the information would be used at that time.

Mr. KUCINICH. Is it possible, though, if I, you know—isn't it possible that had your publicist released this information publicly, it would have created such an uproar that there would have been no way that your bid could have been easily dismissed?

Mr. HAVENICK. We have a tremendous amount of difficulty in the Federal lawsuit because we really don't know who the Justice Department is representing. I think that they should be representing me as an American citizen. I don't think that they're doing that in this case. The Justice Department is defending people who we feel did wrong. But we—what we gave to Justice Crabb that was a re-

sult of the State lawsuit was sufficient for her to come out with her ruling in March 1997 in which she found that there was evidence of political maneuvering or whatever in the outcome of this event. So what we presented to her was enough.

But we are very, very suspicious of what the position of the Justice Department is in the Federal lawsuit, because are they defending me as an American citizen, forgetting that we're a part of the plaintiffs; are they defending people who have alleged to have done something wrong who are employees of the Interior Department? We're really not sure what side they're on. And we have got to be careful with what we do with information that we have, because we don't know who's on what side.

Mr. KUCINICH. Finally, Mr. Chairman, I will wrap this up. I know you have been very generous, and I thank you.

Are there any other—this McAuliffe revelation today is kind of a surprise. Are there any other surprises that you have been saving that might be helpful to bring forward right now so we can get a better understanding of what kind of case you are bringing before this Congress?

Mr. HAVENICK. I don't mean to belittle this, but this is not a surprise party. But that would really be part——

Mr. KUCINICH. If you are enjoying it, I hope you are.

Mr. HAVENICK. We're not. But it would be part of the work product of the Federal lawsuit, which is extremely important to us.

Mr. KUCINICH. Thank you, Mr. Chairman. Again, I think these hearings do have use and value. And I thank the gentleman for taking his time to bring this information before this committee.

Mr. HAVENICK. Thank you.

Mr. BURTON. The gentleman's time has expired.

Mr. Snowbarger.

Mr. SNOWBARGER. Thank you, Mr. Chairman.

And I guess, first of all, let me respond to the remarks of my friend from Ohio, when he suggested that we have a terrible system out there. And the implication was that when things go bad, the system makes us do it. I think we still have some personal responsibility and accountability for what we do, and I think we are excusing people much too easily if we say the system made them do it.

The other thing I want to point out—I noticed my friend Mr. Mica and Mr. Souder also prefaced their remarks. I am no proponent of gambling. As a matter of fact, in the 12 years of the Kansas State Legislature, I gained quite a reputation. You can go back and talk to your industry group about that. But, again, as I mentioned, that is not the issue here.

I am also an opponent of political corruption, and I am also an opponent of that corruption being used and using the system to improperly influence decisions.

I want to followup on the letter that you were handed by Mr. Barrett when he was doing some questioning. It had to do with the Nebraska tribe who is looking for trust land in Iowa. And part of that letter indicates that that IGRA would require the concurrence of the Governor of Iowa for seeking any such acquisition. That refers to a fact that a Governor basically has a veto power over

whether or not trust—or land within his State can be taken into trust; is that correct?

Mr. HAVENICK. That's correct.

Mr. SNOWBARGER. To your knowledge, in your case, has Governor Thompson ever communicated his willingness or his opposition to placing this land around Hudson in trust?

Mr. HAVENICK. No, he has not. We have never gotten the approval out of Washington. And the Governor is the next step. So he's never been asked directly what the answer is. And I really don't think he should have to answer the question until he's presented with it.

Mr. SNOWBARGER. Well, apparently they are asking for differences in the cases. And apparently the Governor in Iowa has already indicated his unwillingness to place that land in trust, which gave them a reason to deny this application. Again, you haven't reached the stage where the Governor of Wisconsin has been put in that position?

Mr. HAVENICK. No, sir.

Mr. BARRETT. Will the gentleman yield for a moment, please?

Mr. SNOWBARGER. I yield.

Mr. BARRETT. Again, I think that there is some uncertainty about this. I read three times a letter that I felt was pretty unequivocal in the Governor's opposition. And I read——

Mr. SNOWBARGER. Reclaiming my time, what I had asked was whether there was anything in the record anywhere about the Governor's willingness or opposition, and the answer was no. And that differs from this case in that the Governor of Iowa had expressed opposition and was unwilling to place that land into trust. So there is a distinction between the two.

I would like to followup a little bit on the discussion about your conversation with Terry McAuliffe. I note, and I think it is rather ironic, that you met Mr. McAuliffe at the time of this conversation at a fund-raising event in Florida.

Mr. HAVENICK. Yes.

Mr. SNOWBARGER. Do you recall what that fund-raising event was for?

Mr. HAVENICK. Yes. It was the Clinton/Gore Re-election Campaign.

Mr. SNOWBARGER. Did you make a contribution to attend the event?

Mr. HAVENICK. Yes.

Mr. SNOWBARGER. All right. I will leave it at that.

Let me go on and ask for some clarification. Well, I guess the point being you have contributed to Democratic candidates as well as to Governor Thompson and other candidates——

Mr. HAVENICK. Correct.

Mr. SNOWBARGER [continuing]. In California. OK.

Let me followup on one that hasn't had much attention here, and that is the December 3, 1996, meeting in Wisconsin. You discussed the fact that tribal members were meeting with officials of BIA. First of all, I find that curious. The lawsuit had been filed at that point in time; is that correct?

Mr. HAVENICK. Correct. The lawsuit was filed 14 months before—15 months before that.

Mr. SNOWBARGER. Did the topic of the lawsuit arise at this particular meeting——

Mr. HAVENICK. No.

Mr. SNOWBARGER [continuing]. The December 1996 meeting?

Mr. HAVENICK. No. I don't believe it did.

Mr. SNOWBARGER. It says in here that you were complaining about the turndown. It is quite difficult to believe you didn't discuss the lawsuit in relation to the turndown.

Mr. HAVENICK. I don't think we did discuss the lawsuit, because I think we were told that we were both litigants, you know. Both sides were told that and not to get into—into the lawsuit.

Mr. SNOWBARGER. But apparently you did have some conversation with BIA officials about their reasoning or their rationale for turning you down.

Mr. HAVENICK. Yes. At that December 3rd meeting, yes.

Mr. SNOWBARGER. Right. And it sounds like there may have been some long discussion with disagreement among the parties about what the facts may have been. Is that——

Mr. HAVENICK. No. There were—there were other proposals that they were coming with, like drop the lawsuit and start over and that sort of thing. And, you know, we were not going to start over. We feel that the case was very strong, and the application was very strong in the way in which it was presented. And that was really the gist of what Mr. Skibine was coming to try to convince the group Four Feathers to do, to start to drop the lawsuit and start over. There was no real discussion as to the merits of the lawsuit, but that suggestion was dismissed out of hand, so it never went anywhere.

Mr. SNOWBARGER. Well did Mr. Skibine leave the impression that if you were to drop the lawsuit and start the process again, that there would be a better outcome?

Mr. HAVENICK. Well, there was an implication that there could be a better outcome.

Mr. SNOWBARGER. And yet your statement that Mr.—your recollection of the statement Mr. Skibine made was that, basically, don't blame me, it was the political people who turned you down?

Mr. HAVENICK. Correct. It went upstairs—don't blame me. When it went upstairs, politics took over.

Mr. SNOWBARGER. OK. And implication, you said, of his—of the whole discussion was that that might not happen to you the next time around?

Mr. HAVENICK. Correct.

Mr. SNOWBARGER. And this is after the November 1996 election?

Mr. HAVENICK. Correct.

Mr. SNOWBARGER. Thank you, Mr. Chairman. I yield back.

Mr. BURTON. The gentleman's time has expired.

Mr. Sununu.

Mr. SUNUNU. Thank you very much, Mr. Chairman.

Mr. Eckstein has testified in the Senate that in a meeting with Secretary Babbitt, Secretary Babbitt stated quite clearly to him, I guess his phrase was, do you know how much these opponents of this project have contributed? And Mr. Eckstein's response was that he didn't know. And the Secretary indicated that it was as

high as a half a million dollars. Were you aware of that testimony that Mr. Eckstein provided?

Mr. HAVENICK. Yes, I was.

Mr. SUNUNU. Were you aware of that story, or had Mr. Eckstein relayed that story to you at any time prior to his giving testimony in the Senate?

Mr. HAVENICK. Yes, he did. Actually, Mr. Eckstein relayed the story to Mark Goff right after his meeting with Mr. Babbitt on July 14th, and Mr. Goff relayed the conversation to me right after his conversation with Mr. Eckstein on July 14th.

Mr. SUNUNU. And when was Mr. Goff's conversation with you?

Mr. HAVENICK. On July 14th, right after—within a couple of hours.

Mr. SUNUNU. Literally immediately the same——

Mr. HAVENICK. Yes. Yes.

Mr. SUNUNU. So you were aware—prior to any of the discussion, the testimony, the subpoenas that have gone on through these committees, you were aware that Mr. Eckstein had clearly made that allegation?

Mr. HAVENICK. Yes.

Mr. SUNUNU. When Mr. McAuliffe said to you that he had met with Don Fowler and others and turned this project around, obviously you were surprised. What did you take to mean that he had met with Fowler? What kind of a discussion did you understand to have taken place?

Mr. HAVENICK. I thought that he had been the conduit who had brought together the opposing tribes and their lobbyists with the appropriate parties, and that together they backed the denial.

Mr. SUNUNU. And obviously one of your greatest concerns with this denial and what you have emphasized in your lawsuit is that as a result of that influence and money being brought to bear, the rules, the regulations and the laws associated with granting or rejecting this permit were not followed, correct?

Mr. HAVENICK. Correct.

Mr. SUNUNU. I direct your attention to exhibit 335. It is an analysis of the risks of the litigation, Sokaogon, Sokaogon, and the rest.

[Note.—The information referred to may be found on p. 137.]

Mr. HAVENICK. Sokaogon.

Mr. SUNUNU. That is the Federal case; is that correct?

Mr. HAVENICK. Yes, it is.

Mr. SUNUNU. On page 2 of that, it states that—this is the solicitor writing, analyzing your claim of rules, laws, regulations not being followed. And it states that,

> We have determined that the alleged problems with the section 2719 process are significant. We are concerned about our ability to show that plaintiffs were told about and given an opportunity to remedy problems, which the Department ultimately found were outcome-determinative. Area Directors are told to give applicants an opportunity to cure problems, and it will be hard to argue persuasively that applicants lose this opportunity once the Central Office begins its review.

Now, as far as we can tell, it seems that you were never given that opportunity to cure problems with the application; is that correct?

Mr. HAVENICK. That's completely correct. We were never given the opportunity.

Mr. SUNUNU. You referred to a memo that Mr. Duffy had sent that also referred to the right of the parties to be given the opportunity to cure defects.

Mr. HAVENICK. Yes, I did.

Mr. SUNUNU. Both cases, sir, are obviously an attempt to make sure that this is a fair and open process; is that correct?

Mr. HAVENICK. That is correct.

Mr. SUNUNU. Ultimately, however, you were not successful. You were not given this opportunity through the process. Mr. Skibine has said in your conversation that it was a political process from above that caused this to fail. Are you familiar with a memo of June 8th authored by Mr. Skibine, however, that seems to contradict the final rejection?

Mr. HAVENICK. Well, I believe that's Mr. Hartman's; June 8th is Mr. Hartman's.

Mr. SUNUNU. I am referring to that draft.

Mr. HAVENICK. The one that is stamped "draft."

Mr. SUNUNU. It is signed by Mr. Hartman?

Mr. HAVENICK. Yes.

Mr. SUNUNU. I would just like to re-emphasize the conclusion stated right in the beginning of the paragraph. It says, "Therefore, the staff recommends"—this is the Indian Gaming Management Staff at Interior—"That the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community."

That clearly contradicts the memorandum of July 14th; does it not?

Mr. HAVENICK. Yes, it does. We also found it strange that if that were just a draft, why was it signed? But that's neither here nor there.

Mr. SUNUNU. I certainly don't have an answer to that. You were not aware that this memorandum was written on or about June 8th supporting the finding of no detriment to the community?

Mr. HAVENICK. We were aware.

Mr. SUNUNU. Were you made aware of it when it was written?

Mr. HAVENICK. No, we were not.

Mr. SUNUNU. You were not made aware of the decision to reject the application or any problems with the application until the June 14th decision memo, correct?

Mr. HAVENICK. We got the July 14th decision memo turning us down. We were never made aware of any problems with the application or anything that was not fixable.

Mr. SUNUNU. When Skibine—Mr. Skibine indicated that he was turned down or forced to back down by political forces, did he reference the fact that he had written a memo in support of the application previously?

Mr. HAVENICK. No.

Mr. SUNUNU. Thank you very much, Mr. Chairman.

Mr. BURTON. The gentleman's time has expired. Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman. Let me briefly state at the outset that I have grave reservations about Indian gaming. I have opposed Indian gaming in Arizona. I believe that we owe the Native American people of this country a sound economic develop-

ment, but to place all of our eggs in the basket of Indian gaming I think is a mistake.

However, this hearing is not about Indian gaming. This hearing is about the process which resulted in the decision turning down your license request. And I have to tell you that I am stunned by one particular section of your testimony here. And I want to clarify part of it.

I think the McAuliffe testimony is very interesting, but I want to focus on what you have to say about what Mr. Skibine said at the December 3, 1996, meeting. That is a meeting which occurred long after this decision was made.

And first I want to clarify the language. If you look at that language, you have written, finally, Mr. Skibine said, quote, "look, don't blame me." And then your typed statement that I have says "we have it to you." I presume that's a typo and that it should have said "we gave it to you."

Mr. HAVENICK. That is correct.

Mr. SHADEGG. OK. So for the record, you would like to correct that statement?

Mr. HAVENICK. Yes.

Mr. SHADEGG. That's a typo. It should say "we gave it to you"?

Mr. HAVENICK. Correct.

Mr. SHADEGG. And you go on to say, and this is a direct quote from Mr. Skibine, it was the political people who turned you down, close quote.

Mr. HAVENICK. Correct.

Mr. SHADEGG. Can you first set the stage? Who all was present at the meeting, what was the meeting called for, and how did that statement happen to come out?

Mr. HAVENICK. The meeting was—Mr. Skibine was coming up to Wisconsin to meet with all of the Wisconsin tribes, all 11 tribes.

Mr. SHADEGG. I understood he was bringing good news.

Mr. HAVENICK. That he was bringing good news and he was going to have a meeting with our group the day before the big meeting with all of the tribes, and that he was bringing good news with him.

Mr. SHADEGG. What was the good news to be?

Mr. HAVENICK. Well, good news is relative. But the good news was that, if we started the application all over and we dropped the lawsuit, that we would probably be looked favorably upon the next time around.

Mr. SHADEGG. Why would Mr. Skibine consider that good news? Was he generally favorable to this idea?

Mr. HAVENICK. Favorable to the idea of starting the application?

Mr. SHADEGG. No, generally favorable to allowing you and your partners to have the casino.

Mr. HAVENICK. In any meeting that I ever attended with Mr. Skibine, he always was favorable or at least appeared favorable to me to this project.

Mr. SHADEGG. Which would be consistent with the memo that my colleagues just questioned you about which indicated support, written by Mr. Skibine, indicating support for the casinos.

Mr. HAVENICK. That memo would be completely supportive of every indication that he ever gave me or any of my partners.

Mr. SHADEGG. All right. So he's there. And what leads him to say, under what circumstances does he happen to say, don't blame me, we gave it to you? That sounds like past tense. It was the political people who turned you down.

Mr. HAVENICK. When he presented the idea of filing the new application and starting the process over, it had taken us 3 years to go through that. And as Mr. Lantos pointed out, we lose money every day that we operate that thing. And just the thought of, to us, of starting this over was not palatable.

The tribes are really desperate for some kind of funding, and they have limited resources. So the thought of their using any more of their limited resources to start this thing over was highly unpalatable. So that suggestion was dismissed in the first sentence. It didn't go anywhere beyond that.

At that point, the tribes and the other people in the room, including me, started asking him questions about what was it that was so wrong in the application and why weren't the procedures followed and why was there no consultation and why, why, why. And after about the fourth or fifth why, I guess he really didn't want to listen to the whys anymore. He said it was that mea culpa. Listen. We gave it to you. When it went upstairs, politics took over.

Mr. SHADEGG. Who did you understand him to mean by we gave it to you?

Mr. HAVENICK. I understood him to mean Mr. Hartman and him, the people who were in his office, the people that we understood to be the people who were working on this application. All of the other people involved, Mr. Anderson and the others, never even read the application.

Mr. SHADEGG. Did you question him at all as to what he meant by the political people or politics that turned you down?

Mr. HAVENICK. No, we had a pretty good idea of what he meant.

Mr. SHADEGG. You were aware that he has said that he, in sworn testimony before the U.S. Senate, or in a deposition before the Senate, that he made this decision and that politics played no role in it?

Mr. HAVENICK. I am well aware of his statement. But I know what he said to us also.

Mr. SHADEGG. How many people were witness to that conversation?

Mr. HAVENICK. Probably 20.

Mr. SHADEGG. And all of them you believe would have a recollection close to yours that he said that we gave it to you, meaning line people within the Department of Interior, and politics reversed it.

Mr. HAVENICK. I would say the majority of them would know that. It was like the career people who were for this. But it went beyond the career people.

Mr. SHADEGG. Your testimony says officials of the BIA, meaning that Mr. Skibine was not the only official with the BIA present when he made that statement.

Mr. HAVENICK. Correct.

Mr. SHADEGG. Can you—I know the chairman has asked you to give the names of the individuals present.

Mr. HAVENICK. Yes.

Mr. SHADEGG. Can you tell us the names of the other BIA or government officials who were present?

Mr. HAVENICK. I believe one of them was Robin Jaeger. But if you ask Chairman Ackley, I believe he might have a better handle on who those people are, because I really wouldn't have known who they were. You know, I met them maybe once and maybe never before. But I think he could give you the names.

Mr. SHADEGG. Knowing the names of all—I think this is particularly significant. I think knowing the names of all of those individuals, including other BIA officials, would be extremely important for us.

With the chairman's indulgence, one last question. This has been under study by the Justice Department for more than 70 days. You have not been questioned by anybody at the Justice Department about the conversation?

Mr. HAVENICK. No, I have not.

Mr. SHADEGG. To your knowledge, has anyone else present in the room when this revelation occurred by Mr. Skibine been questioned by the Justice Department?

Mr. HAVENICK. I don't know. But I—I don't know.

Mr. SHADEGG. Thank you very much.

Mr. BURTON. The gentleman's time has expired. We are not going to a second round; however, we are going to recognize Mr. Barrett briefly for a couple legislative comments.

Mr. BARRETT. If I could, Mr. Chairman. I want to concur with what Mr. Kucinich said, because I think, if there's one thing that probably all the Members of this panel agree on, is that it probably wasn't appropriate for Duffy and Kelly to leave the Interior to work for the Shakopees. I think there's a problem there if you have someone who basically is going from the Department of Interior directly to the tribe.

I don't know if there are limitations because of Indian treaties, as to limitations on that, but that's something I would be interested in exploring as a committee. If not, I would request the Department of Interior to look into that. And I know on the State level, at least in Wisconsin, this is a time when the gaming compacts are being renewed. If we're going to have credibility on this issue in the future, I think this is an issue we have to address. So we may not agree with you on everything, but I agree with you and I agree with Mr. Kucinich that this is a problem.

Mr. BURTON. We will ask Representative Young and Representative Pombo, the chairman of the Committee on Resources and the Subcommittee on the Interior to look into this, and I'm sure that they will.

Mr. Havenick, I want to thank you very much. You've been a good witness, and you've been very patient, and you've acquitted yourself well. And we thank you very much for being with us today.

Mr. HAVENICK. Thank you very much.

Mr. BURTON. We now invite Ms. Bieraugel and Ms. Berg to come forward and be sworn. As I understand it, Ms. Bieraugel represents the people who oppose the facility in Hudson. And Ms. Berg is a resident and president of the Sandra Berg Communications, and that's a company located in Hudson, WI. Would you both stand and

be sworn? I don't know who that is in the middle, but would you like to be sworn as well?

A VOICE. No.

Ms. BIERAUGEL. Mr. Chairman, I wasn't informed that I was going to be sharing this.

Mr. WAXMAN. Could you speak into the mic?

Ms. BIERAUGEL. I wasn't informed that this was going to be a dual thing. We are obviously on opposite sides. I don't think you would have Mr. Havenick and Mr. Babbitt sitting at the same table. Can I ask how this is going to be conducted in terms of questioning?

Mr. BURTON. Well, what we will do is——

Ms. BIERAUGEL. Can you do one at a time?

Mr. BURTON. No. What we will do is we will allow you to make an opening statement. We'll allow Ms. Berg to make an opening statement. And then the members of the committee may question whomever they like. I don't think the questioning is going to be of long duration. The main part of your testimony will be your opening statement. I don't think you're going to have to endure too much in the area of questioning. That's fine of you.

Mr. WAXMAN. Mr. Chairman, before you swear them in, just to answer this question that has been raised. We've been pressing to have you testify. The chairman agreed we could have you testify tomorrow. He told us at the beginning of this morning, at the beginning of this hearing or early this hearing, that you would be permitted to testify today. We were very appreciative of that. Just 2 seconds ago, the chairman informed me that he found somebody else to speak on the other side. I don't have any problem with that. I just think it's a little bit of a cruddy way to do business.

Ms. BIERAUGEL. I don't have any problem with this.

Mr. WAXMAN. But it's not unusual for a congressional hearing to have two witnesses taking different points of view on the same panel. We've even encouraged that. We have that so we can have the witnesses heard.

Ms. BERG. I would be happy to go afterwards and not sit up here.

Mr. WAXMAN. What I'm saying is that, as far as I'm concerned, and you shouldn't be concerned about it, we ought to have both of you make your statements. We can ask questions of either one of you.

Mr. BURTON. Let me just say that you were not here, Mr. Waxman. The minute I found out that Ms. Berg wanted to testify I did talk to Mr. Barrett. He'll attest to that fact. It was probably 45 minutes ago. If you were in attendance, you would have known and you would have had time to raise your objection.

Mr. WAXMAN. Wait a minute. 45 minutes. We started at 10 a.m. It's now almost 6 p.m. I don't object to having two witnesses testify.

Mr. BURTON. Do you have a point of order?

Mr. WAXMAN. It just it seems to me that if you're going to give a courtesy, you ought to give a courtesy more than 45 minutes to any of the minority about witnesses you're going to have at a hearing.

Mr. BURTON. I'm not going to extend this debate——

Mr. WAXMAN. I do not have a point of order.

Mr. BURTON [continuing]. Other than to tell you, Mr. Waxman, I did not know about this myself until a short time ago, and I was trying to accord the same courtesy to Ms. Berg that we were according the other person. That's all I was trying to do.

Mr. BARRETT. Mr. Chairman.

Mr. BURTON. Would you ladies like to be sworn?

Mr. WAXMAN. You're only the chairman. You should have informed us earlier.

[Witnesses sworn.]

Mr. BURTON. Ms. Bieraugel, if you would like, we would be glad to start with you. You may have 5 minutes for an opening statement.

STATEMENTS OF NANCY BIERAUGEL, RESIDENT, HUDSON, WI; AND SANDRA BERG, RESIDENT, HUDSON, WI

Ms. BIERAUGEL. Thank you. My name is Nancy Bieraugel. I've been a resident of the Hudson—of the community of Hudson, WI, for over 20 years. I'm the mother of two teenage sons John and David and wife of Robert. I am also the CEO of a small beverage business called Kristian Regale. Thank you, Mr. Chairman and committee members, for having me testify.

For weeks we have been reading stories in major newspapers about the scandals surrounding the decision to deny an application to take land in the city of Hudson and put it into trust land for the purpose of opening an Indian casino. The process that is being examined and the claim that the decision was tainted greatly concerns the people of Hudson, WI.

We hired no high powered lobbyists. We had no "connections." We were our own lobbyists. And despite the intense efforts of the tribes and their lobbyists, we believe that this is a case where government truly worked. That a very good policy of not cramming a casino down the throat of a community who opposes it was in part the result of intense opposition from the Hudson community.

We were very much a part of the process by which this decision was made as we, like the other parties involved who will be affected by the outcome of this decision, were allowed to comment and give our input. Yet, in both the Senate and almost the House committee hearings, our role has been completely ignored or glossed over. We believe this has happened because we don't fit in with the scandal theory.

The local opposition was not partisan. It was not anti-Indian. There is not an Indian reservation in Hudson or St. Croix County. The local opposition was about not wanting casino gambling in our small city.

The opposition includes a vast majority of the people of the Hudson community, and it cuts across all political parties and income levels. The local opposition was the basis for the denial of the casino application. And we are here to tell Congress that these reasons are valid. You see, we believe that the casino interests have switched the issues. The real David versus Goliath story is not "poor tribes" versus "rich tribes" but the small community of Hudson versus the Florida based gambling enterprise.

This battle began nearly 10 years ago when the Florida controlled dog track was forced upon our community. The opposition

has been vehement and continues to this day. In fact, the tact to switching the issues has been raised before. In the 1992 casino referendum, Croixland poured over $12,000 into a marketing scheme that told people in the city of Hudson to "Vote Yes For Lower Taxes." Nowhere did you see the word "casino" on their hundreds of yard signs. Their ads read: If you own a $100,000 home, it's $900 in your pocket, the savings they guaranteed in property tax savings. In fact, they guaranteed $5 million to the county, city and schools.

The truth is that the 1992 referendum was not even the same casino proposal that is being debated. That didn't exist at that time. That casino proposal was with a different Indian tribe, the St. Croix Chippewa, which is the closest tribe to the city of Hudson.

The 1992 referendum was a loss for the casino proponents when you combine the votes of the city of Hudson and the town of Troy. Why should the town of Troy be considered? Because the town of Troy is part of the Hudson community. The people who live in Troy have a Hudson address. They have a Hudson telephone exchange, and they bring their children to Hudson schools, to which they pay thousands of tax dollars. They have no shops or gas stations. Land was annexed from Troy for the purpose of building the dog track and up until recently bordered the track on three sides.

Who recruited who? Did the tribes approach the failing dog track? Did the failing dog track recruit the tribes? Was this an act of benevolence, or was it driven by the self-serving need to bail the dog track out of nearly $40 million of debt?

Another truth is that the agreement for government services was never an endorsement of having a casino in the Hudson area. Our elected officials had been told that the land could be put into trust and that the community could get no compensation for the lost property tax dollars. This agreement was negotiated under the condition that the merits of a possible casino were not to be discussed. All such discussion would be ruled out of order. This agreement was an insurance policy. It was only enforceable if the land went into trust.

In 1993, the statewide gambling referenda, which is the most recent reflection of voter sentiment, 70 percent of the Hudson area voted to restrict casino gambling in the State of Wisconsin by means of a constitutional amendment. In 1994, long before the BIA's announcement, of which Mr. Havenick testified, there was little opposition, a petition of over 3,100 signatures of Hudson area residents, this isn't divided up, but this—this is just the Hudson School District. And there were hundreds more that we could have obtained. This was presented to Governor Tommy Thompson opposing the current, the current casino proposal. A copy of this petition was also presented to the BIA regional office in Minneapolis.

In 1994, the town board of Troy passed a resolution opposing casino gambling and declared it would be detrimental to their community. The vote was unanimous, 6 to 0. In 1995, the common council of the city of Hudson passed a resolution opposing the casino 4 to 2. And in 1995, many major businesses sponsored a full page ad which was an open letter to Secretary Babbitt, Governor Thompson, and Mayor Breault opposing the casino and stating that it would be detrimental to our community.

Who is the best judge of detriment? Shouldn't the owners of businesses be in the best position to determine what is harmful to their business? Shouldn't the people who live in these communities? In 1995, Congressman Steve Gunderson, Senator Russ Feingold and Representative to the Wisconsin assembly Sheila Harsdorf, our representative, with 28 other Wisconsin legislators, sent a letter to Secretary Babbitt opposing the Hudson casino application.

All of the above information was submitted to the Bureau of Indian Affairs. How do we know? Because we sent it. We were part of the process. We sent letters and made phone calls, and we received letters and phone calls. But no one from the majority side of the committee ever bothered to check with us.

This decision to deny the casino application because of the objections of the people—it said the objections of the people of Hudson counted. If this decision stands untarnished, it will protect all the other Hudsons in the United States of America. Make no mistake, the gambling industry is looking for Hudsons. If this decision falls, and I might add for political reasons, then no community is safe. This decision has relevance to the entire country. Hudson could be any small city.

Had the Department to the Interior approved the application, a national precedent would have been set. Off-reservation casinos could then be forced upon other communities over the objections of their elected officials. And the Indian Gaming Regulatory Act would truly fail to protect.

We have brought Hudson to Washington because we are part of the process that has been ignored. We applaud the Department of the Interior for respecting the community of Hudson and denying the casino application for the right reasons. The right reasons are facts. And we are here to tell them. Thank you.

[The prepared statement of Ms. Bieraugel follows:]

written testimony

My Name is Nancy Bieraugel. I have been a resident of Hudson, Wisconsin for over 20 years. I am the mother of 2 teenage sons, John and David, and the wife of Robert. I am also the CEO of a small beverage business called Kristian Regale.

Thank you Mr. Chairman and committee members for allowing me to testify.

For weeks we have been reading stories in major newspapers, about the scandals surrounding the decision to deny an application to take land in the City of Hudson and put it into trust land for the purpose of opening an Indian casino.

The process that is being examined - and the claim that the decision was tainted greatly concern the people of Hudson, Wisconsin.

We hired no high powered lobbyists. We had no "connections". We were our own lobbyists. And despite the intense efforts of the tribes and their lobbyists, we believe that this was a case where government truly worked. That a very good policy of not cramming a casino down the throat of a community who opposes it was in part the result of intense opposition from the Hudson community.

We were very much a part of the process by which this decision was made, as we like the other parties involved who will be affected by the outcome of this decision, were allowed to make comment and give our input. Yet in both the Senate and **almost** the House Committee hearings, our role has been completely ignored, or glossed over. We believe this has happened because we don't fit in with the "scandal theory".

The local opposition was not partisan. It was not anti- Indian. There is not an Indian Reservation in Hudson, or St. Croix County. The local opposition was about not wanting casino gambling in our small city. The opposition includes the vast majority of the people of the Hudson community - and it cuts across all political parties and income levels.

The local opposition was the basis for the denial of the casino application, and we are here to tell Congress, that these reasons were valid.

You see, we believe the casino interests have switched the issues.

The real David vs. Goliath story is not "poor tribes" vs. "rich tribes", but the small community of Hudson vs. a Florida based gambling enterprise. This battle began 10 years ago when the Florida controlled dog track was forced upon our community in 1988. The opposition has been vehement and continues to this day.

In fact the tactic of switching the issues has been used before. In the 1992 casino referendum, Croixland poured over $12,000.00 into a marketing scheme that told people in the City of Hudson to "Vote Yes For Lower Taxes". Nowhere did you see the word 'casino' on their hundreds of yard signs. Their ads read: "If you own a $100,000.00 home - it's $900.00 in your

pocket - the savings they "guaranteed" in property tax savings. In fact they "guaranteed" 5 million dollars to the County, City, and Schools.

The truth is that the 1992 referendum was not even the same casino proposal that is now being debated. That casino proposal was with a different Indian tribe - the St. Croix Chippewa - which is the closest tribe to the City of Hudson.

The 1992 referendum was a **loss** for the casino proponents when you combine the votes of the City of Hudson and the Town of Troy.

Why should the Town of Troy be considered? Because the Town of Troy is part of the Hudson community. The people who live in Troy have a "Hudson" address. They have a Hudson telephone exchange, and they bring their children to Hudson Schools to which they pay thousands of tax dollars. They have no shops or gas stations. Land was annexed from Troy for the purpose of building the dog track and up until recently, bordered the track on 3 sides.

Who recruited who? Did the tribes approach the failing dog track? - Or did the failing dog track recruit the tribes? Was this an act of benevolence? - Or was it driven by the self-serving need to bail the dog track out of nearly 40 million dollars of debt?

Another truth is that the Agreement For Government Services was never an endorsement of having a casino in the Hudson area. **Our elected officials had been told that the land could be put into trust - and that the community could get no compensation for the lost property tax dollars**. This agreement was negotiated under the condition that the merits of a possible casino were not to be discussed. All such discussion would be ruled out of order. This agreement was an "insurance policy". It was only enforceable IF the land went into trust.

In the 1993 State-wide Gambling Referenda 70% of the Hudson area voted to restrict casino gambling in the State of Wisconsin, by means of a constitutional amendment. (This should supercede the 1992 referendum)

In 1994 a petition of over 3100 signatures was presented to Governor Thompson, opposing the current casino proposal. *A copy of this petition was also presented to the BIA Regional Office in Mpls.*

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And in 1995 many major businesses sponsored a full page ad - which was an open letter to Secretary Babbitt, Governor Thompson, and Mayor Breault, opposing the casino and stating that it would be detrimental to our community.

Who is the best judge of detriment? Shouldn't the owners of businesses be in the best position to determine what is harmful to their business? Shouldn't the people who live in these communities?

In 1995, Congressman Steve Gunderson, Senator Russ Feingold, and Representative to the Wisconsin Assembly - Sheila Harsdorf with 28 other State of Wisconsin Legislators, sent letters to Secretary Babbitt opposing the Hudson casino application.

All of the above information was submitted to the Bureau of Indian Affairs. How do we know? Because we sent it! We were part of the process. We sent letters, and made phone calls and we received letters and phone calls. *But no one from the majority side of the committee ever bothered to check with us.*

The decision to deny the casino application said the objections of the people of Hudson counted. If this decision stands untarnished - it will protect ALL the other "Hudsons" in the United States of America. Make no mistake. - The gambling industry is looking for "Hudsons". If this decision falls, - and I might add for political reasons, - then **NO COMMUNITY IS SAFE.**

This decision has relevance to the entire country. Hudson could be any small city. Had the Department of the Interior approved the application - a national precedent would have been set. Off-reservation casinos could then be forced upon other communities over the objections of their elected officials, and the Indian Gaming Regulatory Act would truly fail to protect.

We have brought Hudson to Washington - because we are a part of the process that has been ignored. We applaud the Department of the Interior for respecting the Community of Hudson and denying the casino application for the right reasons. The right reasons are facts, and we are here to tell them.

Thank you.

Mr. BURTON. Thank you very much. Ms. Berg, you're recognized.

Ms. BERG. I, too, thought I was coming to observe, so I don't have an opening statement. And I wonder if you would let me just speak extemporaneously.

Mr. BURTON. Sure.

Ms. BERG. I would like to draw your attention to the very nice display that the opposition has put together for you, everything on that display is truthful. But what I would like, really like to draw your attention to is what is not on that display.

Starting from the left, the city of Hudson opposes the casino. That is a resolution from our city council. The vote was 4 to 2. It was not unanimous. There are three government entities that are party to the agreement. Along with the city council, the county board and the school district are also equal partners in that agreement. And those entities have chosen to stay out of this fight and to remain neutral.

The town of Troy opposes the casino. That is absolutely true. They have also opposed the joint library agreement. They opposed the—there was a lot of contention with our fire protection agreements.

The town of Troy and the city of Hudson don't get along. That's the truth. And when Nancy said that they belong to the Hudson School District, they have Hudson addresses, they have Hudson telephone numbers, some of them do. A lot of them, about half of them have River Falls addresses. They have River Falls phone numbers, and they go to the River Falls School District. That township stretches from the north to the south about 13 miles. So those people are not in our community.

Going on to the Wisconsin and Hudson say no to the expansion of gambling, that's absolutely true. And in that statewide referendum, I voted against gambling, because, along with a lot of other people here, I'm not sure it's the right thing. But you know what, it's the law of the land, and you people did it.

Majority businesses—major businesses oppose casino. There are, I think, about 25 or 30 businesses there. And that represents, I don't know what percentage, you guys do the math, but there are between 300 and 400 businesses in Hudson. So you tell me if that's an overwhelming majority.

Republicans and Democrat officials oppose the casino. There is only one Democrat up there, so you can erase that "s." You've talked at length about Tommy Thompson and his position, whatever it is. We have two U.S. Senators. The other one is not represented up there.

Steve Gunderson is a very dear and close friend of mine. I love him dearly and we differ on this issue, but you know what, he's not our Congressman anymore. And our Congressman doesn't have a position up there, does he?

Sheila Harsdorf, our representative in the State legislature. There are—I'll take Nancy's word for it—30 signatures on that letter. That's representative of 101 legislators. Not overwhelming opposition, Mr. Waxman.

So you have four legislators up there. We have a lot more. You don't see our State Senator up there. She hasn't taken a position.

You have lovely pictures of very good people, my neighbors in Hudson. There are, I counted about 100 pictures, Nancy?

Ms. BIERAUGEL. I don't know.

Ms. BERG. OK. Hundreds.

Mr. WAXMAN. In the Congress, we don't refer to people by the first names even if we know each other.

Ms. BERG. Mrs. Bieraugel. I've never called her Mrs. Bieraugel in my life. I'm sorry.

Mr. BURTON. Mr. Waxman, when you have a comment, please address the Chair for a point of order instead of the witnesses. I would accord you the same courtesy if you were chairing this meeting.

Ms. BERG. And I will call her Mrs. Bieraugel. If I were to put up a display, I could put up that many pictures, too, because the referendum that was held on a different issue, absolutely on a different agreement, but the people of Hudson were asked clearly, and they knew what they were voting on—yes, we talked about taxes because I'll bet every one of you in your campaign talk about taxes, because that's what people want to talk about. And we did talk about taxes. But everybody knew what they were voting on. They were voting on the sale of St. Croix Meadows to an Indian tribe, any Indian tribe, an Indian tribe, for the purposes of casino gaming. And that referendum passed. Not by much, but it passed. Not overwhelming opposition.

I would also like to say that you need to hear from both sides. And I'm here because I am the other side. And you said a lot today about these people need to be heard. And they do. They're fine people. And I respect the right—as a matter of fact, I applaud their coming out here. But I came out here, too. And I didn't book in advance, and it cost me over $1,000, and I'm hoping I can get my plane out of here because I don't want to rebook.

Mr. BURTON. Do you yield back the balance of your time?

Ms. BERG. Well, I could keep talking.

Mr. BURTON. I presume you do.

Let me just start off, we're going to go the 5-minute rule, I presume, rather than spend the 30 minutes on each side. You can turn the clock on for me and for our counsel here if you will.

Let me just say that I appreciate both of your statements. I think everybody in the committee does. But the issue is not about gambling. What we have been talking about all day today is whether or not the system has been corrupted by illegal contributions and unethical or illegal political influence. I would say that most of the Members up here, myself included, are not for legalized gambling. But the fact of the matter is that it is an issue under discussion today.

But the major issue that we're talking about is whether or not the Department of Interior was influenced by wealthy Indian tribes and their lobbyists who had connections with the White House, with the President, with the Vice President, and with the Secretary of the Interior.

It really does not bear at all on whether or not we're for or against legalized gambling or whether we're for or against a dog track in Hudson or whether we're for or against a gambling casino

in Hudson. It has nothing to do with that. I would not have had the hearing if we were just talking about gambling.

We're talking about illegal or possible illegal campaign contributions. And that has been the focus of our hearings from day one. We've been looking at illegal or possibly illegal foreign contributions coming in from China, in the Middle East, from South America, from all over the place. And coupled with that is illegal contributions that may have come from Indian tribes to buy influence to stop a process that was ethical and lawful. That's what this is all about.

So I appreciate you and all your friends coming out from Hudson. It's very nice to be here. But I think you came out here not understanding fully what this hearing is about. It's not about the Hudson Dog Track. It's not about the Hudson casino. It's about whether or not illegal campaign contributions bought influence that altered the process that was passed by law through the Congress of the United States. That's what this is all about.

Do any of my colleagues wish time on my side? I'll yield the balance of my time to Representative Snowbarger.

Mr. SNOWBARGER. Just quickly to followup on some of your comments, Mr. Chairman. I was originally going to ask these as a question but I don't feel like I should put you on the spot to answer the questions.

Ms. BIERAUGEL. You can put me on the spot.

Mr. SNOWBARGER. You're welcome to if you care to. And again, I want to point out that I have had to deal with these exact same issues at the State level in the State of Kansas, and I'm not known back there as a fan of gambling or of IGRA, either one. And if any of my colleagues care to take on IGRA and change that, I'm with you all the way. Let's go about doing that.

I'm also very well aware of the tactics that are used by the gambling industry to try to assert this in States where we really didn't want it. And we've thus far been able to hold off casino gambling, at least for everyone except Indians. IGRA kind of took away that option for us.

Here's the question, I guess, that I've had to ask myself, and very frankly I don't care to overturn this decision. I just as soon see it stand. I like the decision.

Ms. BIERAUGEL. How does everybody else feel about it?

Mr. SNOWBARGER. I don't like the process by which the decision was made. I think that's the key question to this committee. And here's the question I ask myself; and that is, if it's found out that this decision was based or heavily influenced by campaign contributions, do I support that process? And the answer was, no, I don't. Whereas I am very, very supportive of the end, I'm not supportive of the means. And I don't live my life by a philosophy that the ends justify the means.

I wish you well in your fight against this. Again, I'm not looking for this decision to be overturned in any way, shape, or form. If that happens through the court process, and you need assistance in fighting it back through the other way, again please let me know. I'll be happy to come up and help, because, again, I don't like gambling and I don't like the way IGRA has imposed on the States.

Thank you, Mr. Chairman.

Ms. BIERAUGEL. It's very obvious for us that the proponents of the casino would not have taken it to this level if they didn't have hopes of overturning this decision. And so we just want it to be very clear that if this had been approved it would have set a national precedent, as Steve Gunderson our Congressman at the time stated.

Mr. BURTON. Let me just say that nobody brought it to this level, madam. I called the hearing as chairman to investigate illegal contributions. The proponents of the gambling casino or the opponents had nothing to do with this hearing.

We called this hearing strictly because we wanted to find out if illegal campaign contributions were influencing political decisions or decisions made at the Department of Interior. I called the hearing as the chairman of this committee. It had nothing whatsoever to do with whether the proponents or the opponents were for this project.

Did you want to make one final comment before I yield to my colleague?

Ms. BERG. I would. I would. I really feel that the whole issue here is the issue of fairness and the fairness of the process. And there are some of us out there that really believe that our Government should be fair. And if there is a casino in Hudson or if there is not a casino in Hudson, it stands not to change my life one iota.

But let me tell you. If my Government cannot be counted on to be fair to all of its citizens and to follow its own regulations, then I think we all lose.

Mr. BURTON. I thank you.

I yield now to my colleague from California, Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman.

The contributions from Indian tribes, whether they were to Democrats or Republicans, have not been called into question as illegal, as the chairman has indicated. He thought they were illegal. They are not illegal. The question is whether the decision by the Department of Interior was influenced and, therefore, improper because they received campaign contributions from those for whom they ruled.

Now, you cannot question and evaluate the Department of Interior's decision without some examination of the merits. It is just impossible to do it. The Department of Interior had a decision to make, and they looked at the merits. And it is interesting to see most of the members of this committee thinking that the decision that was made was the proper one on the merits. So they may well have made the decision on the merits for all the right reasons. There are some people who argue they should have made the decision the other way. That argument didn't prevail.

Ms. Bieraugel, what you had to say was very, very important; it is not irrelevant what the community thinks about this issue. And you and your colleagues have come all the way at your own expense to give us this view and are entitled to be heard.

My regret is, it is now 6 p.m., in a hearing that started 10 a.m. There is no press that I can identify in the audience, although there are some, but most of the press has left. I don't know how many people are going to be watching this on television after such a long day.

What you had to say was completely relevant and important to this hearing, and that is what the witnesses that started off the hearing had to say. They wanted to tell us why, as a poor Indian tribe, the decision should have gone their way on the merits as they saw it. So it is not unimportant what you had to say here, and you should have been given an opportunity to speak earlier.

Ms. Berg, usually we are informed of witnesses in advance. I was informed seconds before you came before us, so I don't know much about you. Were you a member of the city council?

Ms. BERG. Yes, I was.

Mr. WAXMAN. And did you lose your re-election over this issue?

Ms. BERG. Yes, I did. I also ran for the State Senate in 1988 and lost that election.

Mr. WAXMAN. And was an issue in your campaign that you supported the——

Ms. BERG. Huge issue. As a matter of fact, in that election there were two dog tracks being talked about, one in the township of Hudson and one in the city of Hudson. And all of the incumbents who supported the dog track were not re-elected. It was definitely why I was not re-elected.

Now let me go on, please.

Mr. WAXMAN. Excuse me. This is my time, and I only have a limited amount.

Ms. BERG. OK. But let me tell the whole story, please.

Mr. WAXMAN. We will see if you get a chance to do it. And I hope you do.

So you ran for office on this issue and lost, and the people have expressed their view on it. But you have been presented to us as Sandra Berg from Sandra Berg Communications. Who do you represent in the Sandra Berg Communications?

Ms. BERG. Me.

Mr. WAXMAN. Do you have any contractual relationship with Mr. Havenick or the casino?

Ms. BERG. Yes, I have. In the early part of the 1990's, right around the time that the dog track was opened, and during the period of the referendum in Hudson, I did work for Mr. Havenick. And my job specifically was to make sure that that organization followed all of the campaign laws in the State of Wisconsin. That was my job; I was paid for it. And I worked for him, and I made sure that the $12,000 that——

Mr. WAXMAN. Excuse me. I have to ask the questions, and you have to answer them. This is not an opportunity to go on at random, because we only have a limited time.

Ms. BERG. The answer is yes.

Mr. WAXMAN. Do you work for him now?

Ms. BERG. No.

Mr. WAXMAN. Well, listen to the question. You gave the wrong answer. You say $1,000 trip. Who paid for this trip?

Ms. BERG. I did. American Express did, and they'll be reimbursed in about 30 days.

Mr. WAXMAN. What motivated you to come here today at an expense of maybe $1,000 to hear this testimony?

Ms. BERG. Because there was a reporter who came to my house to interview me that told me that seven or eight people were going

to be here from the opposition. And I called Mr. Bruns, who was a former city council member, who resigned last June, and asked him if he would like to come out and observe. I really thought we were just going to observe.

Mr. WAXMAN. So you are here simply to observe. You are not in any economic relationship with anybody that has an interest in this casino?

Ms. BERG. Not at this time. But I was. I did.

Mr. WAXMAN. I see my yellow light is on, and that just means that my time is up. Let me thank you for your testimony. And I want to yield to Mr. Barrett.

Mr. BARRETT. I just want to disagree strongly with Mr. Waxman. I think the journalists who are here are fine journalists, some of the finest journalists on Capitol Hill. And the spelling of my last name is B-A-R-R-E-T-T.

Mr. WAXMAN. My apologies to the journalists who are here today.

Mr. KUCINICH. Will the gentleman yield?

Mr. WAXMAN. Let me yield to Mr. Kucinich.

Mr. KUCINICH. In the seconds that remain, I think that we are here to determine whether there were plausible reasons why the application for the casino in Hudson should have been rejected. The testimony that has been given here suggests that there were, there was widespread opposition.

All over this country, Mr. Chairman, we have people who are protesting things that could damage their community—rezonings, the location of chain drug stores in residential areas, cellular towers, nuclear waste being dumped in their communities, eminent domain for highways and widening of roads. And if there is one place in the country, Hudson, that won a victory, then there ought to be people cheering all over the country for that one place.

And you ought to be congratulated. Your appearance here was not in vain. You are an inspiration to people around the country that they can fight the system and win.

Mr. BURTON. Let me just say that I think it is laudable that people do stand up against things that they don't want in their community and are successful. But, once again, I want to state that the purpose of this hearing is to find out whether or not the law was broken by illegal campaign contributions or campaign contributions given to influence political decisions. And if that did occur, and that is what we are after, then people broke the law, and if they broke the law, they should be held accountable.

In the hearings, I know that the opposition today has tried to make this a referendum on whether or not there should be a gambling casino in Hudson, WI. The fact of the matter is, that is not what is at issue before this committee. It is whether or not illegal campaign activity took place, illegal contributions, or contributions that were made that influenced the decisions made by the Department of Interior. And if that was the case, then those who broke the law must be held accountable.

Does anyone else seek 5 minutes?

Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman. I will endeavor not to use my full 5 minutes.

I want to thank you both for being here. I appreciate your energy and effort, taking the time to come here and express yourselves. I want to make some points very clear.

I want to begin by saying that I violently disagree with my friend, Mr. Kucinich. This is not about whether there were plausible reasons for the Department to turn down the license. That is not what this hearing is about. This hearing is not about whether casino gambling is good or bad. It is not whether Indian gambling is good or bad. It is not about whether casino gambling for Hudson, WI, would have been good or bad.

This hearing is precisely about whether or not we are a Nation of laws and we follow those laws and they are applied equally to all citizens regardless of their power or their political influence; or whether we are not a Nation of laws, whether we are a Nation of political influence where we write a series of laws and lay out procedures where people can be treated equally before the law, equally before the lady of justice, who has a blindfold on, or in fact they are not treated equally because some have money and some have power and some have influence and some have aggressive lobbyists who will not give up. This is an inquiry into whether corruption went to the highest levels of this Government, and it is not about gambling.

I happen to be a vehement opponent of Indian gaming. I have worked in Arizona with gaming and nongaming interests, with Indians and non-Indians. And I will tell you that I think IGRA is a grave mistake for this Nation. I think we are creating a huge dependency within America's Native Americans on gambling and its proceeds. We are not giving them legitimate economic development, which we should be doing. We are not giving them free enterprise zones, which we should be doing. We are not giving them tax breaks so they can build long-term legitimate businesses that do not bring crime.

Instead, having breached our obligations to Native Americans for generations, we suddenly say, let's solve it by giving them gambling, and if they get some crime or if it hurts their kids or if it brings corruption into their communities, too bad, they'll at least have money.

Now, I personally have fought Indian gaming in Arizona not because I don't care about Native Americans but because I believe it is wrong and will do severe damage. I personally led the fight against a ballot initiative in my county to expand Indian gaming in the last election, and I put my own personal money into that effort, and I recruited money and solicited money from others.

This isn't about Indian gaming. What it is about is whether or not we are a Nation of laws and we abide by those laws and whether those laws were ignored in this case. And I think there has been some shocking testimony today to suggest that at least someone is not telling the truth in this story, and I think we need to get to the bottom of it.

Now, with regard to you, Mrs. Bieraugel—is that right?

Ms. BIERAUGEL. Bieraugel.

Mr. SHADEGG. I apologize. I am trying to pronounce it correctly.

I am with you all the way. I think Hudson should not have gaming if you as a community don't want it. And I will come there and

help you fight it, because I don't like it. But that doesn't mean I agree with the decision of the Department of Interior. And I certainly don't agree with it if it was made on the basis of something other than the merits under the law.

And I simply want to conclude by pointing out to you that while I think IGRA is a mistake and it has serious problems which are bringing about the detriment of this Nation—a lot of gambling, a lot of corruption, and you see the power and money and influence in this particular case—there is one piece of IGRA which is worthwhile and which I call to your attention.

The particular section here that requires the Secretary to decide whether to grant trust status says that if there is a determination that the gaming establishment on newly acquired lands would be, one, in the best interest of the Indian tribes and its members and, two, would not be detrimental to the surrounding community, the Secretary may approve it. And then here is the key for those of you in Hudson who oppose Indian gaming in your community: But only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination.

What that means is that what happens in this hearing about a totally different issue, whether or not corruption occurred, isn't the question. The question is, will Governor Thompson turn this down if it is ultimately done?

The last point I want to make: There was some significance to tribe being made out of this issue, a similar license being turned down, where a tribe from Iowa—no, I'm sorry—a tribe from Nebraska wanted to come into Iowa and set up a gaming operation and the Governor of Iowa said, no, I'm not going to grant permission for an Iowa Indian tribe to come in and conduct gaming—excuse me, a Nevada—a Nebraska Indian tribe to come into Iowa and conduct gaming to the detriment of Nebraska Indians. I don't see a parallel at all. And I thank you for being here.

Ms. BIERAUGEL. May I respond when you're done?

Mr. SHADEGG. Certainly.

Ms. BIERAUGEL. Thank you.

First of all, I think we agree on almost everything, almost everything. Especially I like what you had to say about detriment, about the detriment that gambling is bringing to this whole country. And that's how we see it in the community of Hudson.

Second, I'd like to ask you, do you agree with the policy that has been professed in the Department of the Interior that they should not cram it down the community's throat if the elected officials representing that community vote against it?

Mr. SHADEGG. Yes, ma'am, I do. And that is precisely why IGRA is written to say the Governor has the ability to turn to it down. Yes, ma'am.

Ms. BIERAUGEL. And can I also comment on the Governor? There was another quote that nobody ever mentioned from Governor Thompson. It is right in front of me.

He was debating his Democrat opponent, and they both agreed on the casino issue of Hudson. They both said they were opposed to it. The Governor added, "I would oppose a casino at the dog track and would use whatever power the Governor's office had to

block it." I have never heard any statements about the Governor taking back that statement or saying anything to the contrary.

In regards to the discussion about the expansion of gambling saying, you know, that they would drop some casinos and reduce the number of casinos by 3 from 17 casinos in the State of Wisconsin to—I suppose that would mean 14—it is like trading bags of sands for bags of gold; and everybody with a brain sees that as an expansion of gambling.

Also, may I comment about anything else? I mean, there was some really——

Ms. BERG. I'm going to want some time, too.

Mr. BURTON. We are trying to give you as much latitude as possible. The hour is late. If you could summarize relatively quickly, we would appreciate it.

Before we go any further, do any of my colleagues have any?

OK. If you could make a brief statement on whatever subjects you would like—you have waited all day—we would appreciate it.

Same thing for you, Ms. Berg.

Ms. BIERAUGEL. Thank you. Just a couple points.

The county's position was neutral. It was never an endorsement for the casino. And I have a letter written by the chairman of the county board saying that. Also, the city's position was neutral.

And there needs to be an understanding that our officials were told they could end up with nothing if they didn't negotiate that agreement. And that was why the agreement was negotiated. It was never an endorsement of a casino. It was viewed as an insurance policy. That's all.

Mr. BURTON. Ms. Berg.

Ms. BERG. I'd like to agree wholeheartedly that we're here to talk about the process, we're here to talk about a fair process and making sure that that process that you people laid out is done in a fair manner. And I was under the impression that the Governor's approval or disapproval comes at the end of that process. And it seems to me that we've spent a lot of time here today trying to figure out what the end process is going to be.

And I was of the opinion that the Department of Interior was supposed to make their determination independently. So I don't understand what difference it really makes what Tommy Thompson says, because Tommy Thompson, I would guess, because he's a fine Governor, is going to make that decision based on the final product that comes out of the Department of Interior. Right?

Mr. SHADEGG. Mr. Chairman, reclaiming my time, if I could just conclude by saying that I would suggest to Ms. Bieraugel that you don't want a system where the rich and powerful win and the procedure isn't followed.

Ms. BIERAUGEL. We had no lobbyists. We hired no high-powered lobbyists. We were our lobbyists, and we were part of the process, and that's whats being ignored here.

Mr. SHADEGG. It is not being ignored at all. This hearing isn't about gambling, it is about whether or not the process was corrupted. And there was massive lobbying on behalf of people who wanted to block this casino. And I don't think you want a process where the rich and powerful win and the law gets ignored.

Ms. BERG. May I say, too, that the Patrick O'Connor letter that was faxed to City Hall was faxed to Mrs. Bieraugel. Now, she may not have paid for him. But this came from Lewis Taylor, tribal chairman, to Mrs. Bieraugel. So to say that there was no, you know, large lobbying.

Ms. BIERAUGEL. May I respond to that? That absolutely requires a response.

Mr. BURTON. I will let you respond, but I don't want you two ladies getting into a prolonged debate. So you respond, and I will see if any of my colleagues have any final comments.

Ms. BIERAUGEL. As the organizer of the petition here that we brought a copy of to show you, and also I was part of the business group that opposed it, which represents many very large businesses, I had an idea because we were so surprised that the BIA and the regional office recommended it. In fact, the Governor must have been surprised, too, because he told us in a meeting that he didn't think it would go any further, he thought it would be shot down in Minneapolis.

So I had an idea that I would get a delegation of many people that represented all of the groups that opposed this casino proposal together and that we would all come to the BIA and sit down and tell them all the different reasons that we were opposed to this casino application. And so we knew that the tribes were opposed. We had no contact with them whatsoever.

So I called Lewis Taylor and made the suggestion. I talked to him maybe three times, and he sent me a fax about the letter, the meeting with Dan Fowler. We're mostly Republicans, so we didn't go. He then called me—I don't know, it must have been when this letter was sent—and he said he had a letter that he wanted to send me a copy of. And I said, "Fine. Do you still have the fax number from when you sent me that one other fax?" And he said, yes; his secretary faxed it to city hall by mistake. No one ever even told me. It was when a reporter called me and said, "What's going on? How come they're getting faxes at City Hall from an Indian chief?" And I said, "What are you talking about?"

So he came over to my house. That was the first time I saw the letter. And if I might add, it was such a screwy letter and it had so many inaccurate facts in it that I thought it was just ridiculous and I thought, who would take this seriously? And I didn't even save my copy. I mean, I couldn't believe it.

Ms. BERG. Maybe President Clinton took it seriously.

Mr. BURTON. Mr. Barrett, do you have some more comments?

Mr. BARRETT. If I could have 5 minutes, I'd appreciate it.

Mr. BURTON. Mr. Barrett is recognized.

Mr. BARRETT. Thank you very much. And I know the hour is late.

The chairman said that, really, your being here today is a little misplaced because that is not the issue.

Mr. BURTON. I didn't say that.

Mr. BARRETT. I apologize.

But the inference that I drew was that your attendance was not necessary for these hearings. But, obviously, now you are here. So I apologize to the chairman if I put words in his mouth.

But I am looking at the denial letter from the Department of the Interior, and the first issue or the first ground that is laid out for denying this is the opposition from the community. And I am reading from the letter. "The record before us indicates that the surrounding communities are strongly opposed to this proposed off-reservation trust acquisition." It goes through some of the actions that we have talked about today—common counsel, State legislators.

The paragraph ends, "Because of our concerns over detrimental effects on the surrounding community, we are not in a position on this record to substitute our judgment for that of local communities directly impacted by this proposed off-reservation gaming acquisition."

I don't know if this is the first time that the Department of the Interior ever used this. I don't know if it was inappropriate for them to use this. But they used it.

Ms. BIERAUGEL. We think it was the right thing to do.

Mr. BARRETT. I understand, and I agree with that.

Let me continue, if I could. I think what we have here told, though, is we have a hearing that is obviously very, very critical of the decision that was made. The first panel were the aggrieved tribes, the tribes that lost. I understand why they lost and why they—maybe I don't understand why they lost, given their statements, but they lost. And I understand why they are upset.

Our second panelist was the gentleman who had the controlling interest in the dog track. He lost. He was not happy. So until you testified, our whole first day are people who lost in this. And, frankly, I think that had the decision gone the other way, we could have had a wonderful hearing in the other direction. And I wouldn't put it past the majority in Congress to have held a hearing in the other direction.

And to drag Mr. Eckstein in here and rake him over the coals for being a close associate of Bruce Babbitt, Mr. Havenick said that they had hoped to get access by having Mr. Havenick—I mean by having Mr. Eckstein. You have got people involved on both sides that have close ties at the national level to the Democrats, because the President is in control.

Let's look at the State level. At the State level we have heard a lot of testimony today about how much money was given to Governor Thompson. I have no reason to disagree with Mr. Havenick's reasons for giving money to Governor Thompson, $13,500 on one day from he and his wife and his mother-in-law; that is his right. But my guess is that Mr. Havenick probably gives money to legislators who support dog tracks. I don't have any problem with that. I don't support them; I don't give them any money; that is fine; that is life in the big city. But I don't impugn his integrity for doing that.

But what we have here is people that have lost, that are impugning the integrity of the people who won. And, again, if it had gone the other way, I will tell you what you would have seen. You would have seen Mr. Havenick being raked over the coals for giving all this money to Governor Thompson from the tribes that lost.

And the whole point of this is, you get involved in gaming, you get involved in the Government of the United States or State government deciding economic issues; you are buying yourself a can of

worms that you are just going to regret forever, because once the Government decides who should win in the marketplace—and that is what this is, the Government is deciding who is going to win in the marketplace—you are going to have winners and you are going to have losers.

And here you have big guns on both sides. You have the big guns representing the tribes that won; you have big guns representing the tribes that lost. And when you have got big guns firing at each other, someone is going to get shot. And that is what happened here.

My opposition to gambling has been precisely because of some of these issues. I think there is so much money around, it just clouds people's judgment. And I think people that may have been opposed to it all of a sudden are in favor of it. And that is fine. But I don't think that we should leave today without recognizing a couple things. One, this was a messy situation. And I think that Mr. Babbitt probably made some comments that he regrets. If my best friend in my whole life came in to me and asked me to do something, I would probably fudge a little answer as to why I wasn't doing it. And I think that is what he did. But that is what happens.

So I want to thank you both for coming. I think that your testimony has been well received. And I want to thank the other witnesses for being here today, too.

Thank you, Mr. Chairman.

Mr. BURTON. Any other comments?

Mr. Kucinich.

Mr. KUCINICH. Thank you, Mr. Chairman.

I want to go back to this point Mr. Barrett started to pursue and continue. There are two tests which the Department of Interior must follow with respect to the Indian Gaming Regulatory Act. One test is whether or not the deal or arrangement would be good and beneficial to the Indian partners, and the other test is the local opposition or how local communities feel about it.

The information which has been presented today indicates that there is a dispute over both of those parts. But the hearing has shown conclusively that it is plausible that the law was applied correctly by the Department of Interior. It is not a far-out notion. Had they approved or disapproved of the application and there was no community opposition and the Indian partners who were themselves complaining about the deal, that would have been very interesting. But they had particular concern about the benefits to the Indian partners and they also, according to records, were able to see a demonstrated community opposition, as has been testified today.

I will state again, Mr. Chairman, that if money was used to influence the decisionmaking process, whether the outcome was favorable or not, that is reprehensible. And I think everyone on this committee would agree. But we have had no proof presented to us today of illegal campaign contributions. We have had no proof presented today that decisions were made based on those contributions. We have heard charges, yes. We have heard allegations. That is right. Some of us have suspicions about it, yes. But proof? No.

This committee is about gathering information to be able to make an assessment as to whether or not laws have been broken. If we are going to be consistent with the American system of justice, we have to reach our conclusions based on the evidence, not on wishful thinking of partisans, but on the evidence.

And I am still waiting for the evidence to be brought forward. And Mr. Chairman, if we bring it forward, I will vote with you for the purposes of recommending any action that needs to be taken. But I haven't seen that yet.

I do want to say, though, that I think that it is useful that the chairman holds these hearings. I know I have a difference of opinion with some of my colleagues on this side of the aisle about that. But it is useful that you hold these hearings, because it is still possible that from these hearings we may find a way to change this system.

Thank you.

Mr. BURTON. As we conclude, let me just point out some of the facts that we have found today. The law requires consultation with tribes that make application if they are going to have that application declined. That law was not followed. Rather, the rich tribes that are making $400,000 for each man, woman, and child had a meeting with the Department of Interior, along with their lobbyists. One of the lobbyists was Mr. O'Connor.

Mr. O'Connor is a former executive with the Democratic National Committee, who had met with the President in Minnesota. Subsequent to that, a call was made from Air Force One to Mr. Ickes, who was asked to look into the problem with the Department of Interior. These are facts that came out today. Lobbyists were hired, Mr. O'Connor and others, to stop the progress or process that was taking place at the Department of Interior. After the application was rejected, even though it had been approved at the lower levels, $350,000 in contributions were made to the Democratic National Committee.

After that Mr. Duffy and Mr. Collier, one of whom was a chief counsel to the Department of Interior, and the other was a chief of staff at the Department of Interior—chief of staff to Mr. Babbitt, left the Interior Department and went to work for the very wealthy tribe, the Shakopees, making quite a bit of money.

Subsequent to that, Mr. Collier, who was one of the people who was involved in the decisionmaking in this particular case, carried a $50,000 to $100,000-dollar check to the DNC on behalf of this wealthy tribe, the Shakopees.

Now, you may not consider those facts worthy of consideration. I do. I think those are things that we ought to bear in mind as we continue our hearings. I believe more facts will come out in the days to come.

And with that, let me just thank the witnesses for being here and say that this committee stands in recess until 10 tomorrow morning.

[Whereupon, at 6:30 p.m., the committee recessed, to reconvene at 10 a.m., the following day.]

THE DEPARTMENT OF THE INTERIOR'S DENIAL OF THE WISCONSIN CHIPPEWA'S CASINO APPLICATION

THURSDAY, JANUARY 22, 1998

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The committee met, pursuant to notice, at 10:10 a.m., in room 2154, Rayburn House Office Building, Hon. Dan Burton (chairman of the committee) presiding.

Present: Representatives Burton, Hastert, Morella, Cox, Mica, Souder, Shadegg, Sununu, Snowbarger, Waxman, Lantos, Kanjorski, Maloney, Barrett, Norton, Cummings and Kucinich.

Staff present: Kevin Binger, staff director; Richard Bennett, chief counsel; Judith McCoy, chief clerk; Teresa Austin, assistant clerk/calendar clerk; William Moschella, deputy counsel and parliamentarian; Will Dwyer, director of communications; Ashley Williams, deputy director of communications; Dudley Hodgson, chief investigator; Barbara Comstock, chief investigative counsel; Dave Bossie, oversight coordinator; James C. Wilson, Robert Rohrbaugh, and Uttam Dhillon, senior investigative counsels; Kristi Remington and Bill Hanka, investigative counsels; Robert Dold and E. Edward Eynon, investigative attorneys; Robin Butler, office manager; Carolyn Pritts, Tom Bossert, and Barrett Davie, investigative staff assistants; Phil Schiliro, minority staff director; Phil Barnett, minority chief counsel; Kenneth Ballen, minority chief investigative counsel; Michael Raphael, David Sadkin, Michael Yang, and Michael Yeager, minority counsels; Harry Gossett and Rick Jauert, minority professional staff members; Ellen Rayner, minority chief clerk; and Jean Gosa and Andrew Su, minority staff assistants.

Mr. BURTON. The committee will come to order. Good morning. A quorum being present, the Committee on Government Reform and Oversight will come to order.

Today, we will continue the hearing we started yesterday regarding the Department of the Interior's decision to deny an application made by three Indian tribes in Wisconsin to take land in trust for gambling purposes.

Our first panel today consists of George Skibine. Mr. Skibine, would you stand and be sworn, please?

[Witness sworn.]

Mr. BURTON. On behalf of the committee, we welcome you here today and we recognize you to make an opening statement. We

would like you, if you can, to confine it to 5 minutes, and if you have more than that, we will submit it for the record.

Mr. WAXMAN. Before he begins, Mr. Chairman, I want to say something. We have in the audience Hilda Manuel, who is the Deputy Commissioner of the Bureau of Indian Affairs; she is Mr. Skibine's superior. She is the one who has actually had conversations with Secretary Babbitt, and it seems to me that we ought to have her testify as well.

I know yesterday we suggested it, and there were a number of others that we also recommended, the Republican officeholders who opposed the project. The argument there was that they opposed the project. This isn't about the project, this is about whether anything went on improperly in the decision of the Department of the Interior.

Hilda Manuel's deposition has been taken. It is part of the record, as has Mr. Skibine's. I think it would be appropriate if we give her an opportunity to give us her testimony and subject her to the questioning that all other witnesses have encountered as we search for the truth.

Mr. BURTON. Mr. Waxman, we will take that under advisement; however, this particular panel has been scheduled and we will proceed as we had planned.

Mr. WAXMAN. Well, yesterday we had a surprise witness with 5 minutes' notice, and we could have this witness testify as well.

Mr. BURTON. We have ruled on that.

Mr. Skibine, you may make an opening statement.

STATEMENT OF GEORGE SKIBINE, DIRECTOR, INDIAN GAMING MANAGEMENT STAFF

Mr. SKIBINE. Thank you, Mr. Chairman.

Mr. Chairman, distinguished members of the committee, my name is George Tallchief Skibine. I was born 45 years ago near Paris, France, where I lived until approximately 1968. Both my parents were American citizens, I was born an American, and my mother is an Osage Indian from Fairfax, OK.

I have a degree in economics from the University of Chicago, and a law degree from the University of Minnesota Law School. I am a member of the bar of the District of Columbia and a member of the Minnesota State bar. I have been a civil servant for some 20 years, and served in various positions with the Bureau of Indian Affairs and the Office of the Solicitor's Division of Indian Affairs. I am neither a political appointee nor a politically connected lobbyist.

I am here today to testify before the Committee on Government Reform and Oversight relating to its investigation into whether political contributions to the Democratic National Committee influenced a decision of the Department of the Interior to refuse to place in off-reservation a 55-acre parcel of land located in Hudson, WI, and known as the St. Croix Meadows Greyhound Track, or the Hudson Dog Track, in trust for gaming purposes. I want to thank you for inviting me to testify this morning and giving me the opportunity to clarify my role in the dog track matter.

I was involved in reviewing the Hudson Dog Track casino application from the time I joined the Indian Gaming Management Staff

as its Director in February 1995, through the signing of the final decision letter on July 14, 1995. Throughout this period, I participated in numerous discussions on the subject with civil servants in the BIA and the Solicitor's Office, as well as with Secretarial appointees.

To the best of my recollection, all of these discussions were entirely on the merits of the application. As I have told those who have deposed me in this matter, I was never contacted by the White House, the Democratic National Committee, or the Clinton-Gore campaign regarding the dog track matter, nor was I aware of anyone else at the Department of the Interior being contacted by the White House, the DNC, or the Clinton-Gore campaign regarding this matter. I knew nothing and heard nothing during this period about any partisan political contributions given in the past or expected in the future having anything to do with this decision. As far as I know, the decision of the Department regarding this proposal was made entirely on the merits. I have never had a conversation with Secretary Babbitt about this or any other matter.

I strongly support Indian gaming as a legitimate economic development activity for Indian tribes. But off-reservation Indian gaming proposals, particularly those that involve partnering with non-Indians, must be more closely scrutinized under applicable legal standards.

In the winter and spring of 1995, it was my job to make recommendations to my superiors at the Department in such matters as the Hudson Dog Track. On June 29, 1995, I drafted a recommendation in the form of a proposed letter to the three applicant tribes informing them of the decision of the Department not to exercise its discretionary authority, pursuant to section 5 of the Indian Reorganization Act of 1934, to take the Hudson Dog Track into trust.

I made this recommendation based on the record before me and that record indicated that this acquisition would be extremely controversial. The application was opposed for various reasons by the town council of the city of Hudson, by the town of Troy, by the State representatives for Wisconsin's 30th assembly district, by the U.S. Representative in whose district the Hudson Dog Track is located, by the attorney general for the State of Wisconsin, and by numerous Indian tribes in both Wisconsin and Minnesota. Under the circumstances, I could not in good conscience recommend to the decisionmakers that it was the time and the place to exercise the Secretary's discretionary authority, especially since there is no affirmative trust duty under the IRA to take off-reservation land in trust, and the Secretary has unfettered discretion to say no. I was not pressured in any way by anyone to reach a particular recommendation in this matter.

You may choose to question the wisdom of my professional judgment in this matter, and reasonable people may disagree on the merits of my recommendation; however, it was made solely on the merits. Throughout this investigation I have always tried to tell the truth as I know it. I am a civil servant of two decades' standing who has chosen a career in public service because I believe it is a high calling. My integrity, honesty, and good faith have never before been challenged.

While in certain respects I regret being cast in the middle of this controversy, I understand and deeply respect the role of Congress' oversight responsibility in making sure that decisions delegated from the legislators to the executive are made according to standards established in legislation and not for improper political motives. In my 20 years of service, I have worked equally well with both Republican and Democratic administrations, and I have taken pride in remaining nonpartisan on the job so that my recommendations could be made with the degree of professionalism expected of a nonpolitical civil servant.

This matter has placed incredible demands on me personally and professionally. I am very eager to put it behind me and resume devoting my full attention to my responsibilities in carrying out the important work of the Department.

Accompanying me today is Mr. Tim Elliott, Deputy Associate Solicitor for the Division of General Law at the Department of the Interior.

Mr. BURTON. Thank you, Mr. Skibine.

[The prepared statement of Mr. Skibine follows:]

**STATEMENT OF GEORGE TALLCHIEF SKIBINE
BEFORE THE HOUSE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
ON THE DEPARTMENT OF THE INTERIOR'S DECISION TO DENY THE
APPLICATION OF THREE INDIAN TRIBES TO TAKE LAND IN TRUST
FOR GAMING IN HUDSON, WISCONSIN**

January 22, 1998

Mr. Chairman, members of the Committee, my name is George Tallchief Skibine. I was born 45 years ago near Paris, France, where I lived until 1968. Both my parents were American citizens, I was born an American, and my mother is an Osage Indian from Fairfax, Oklahoma. I have a degree in economics from the University of Chicago, and a law degree from the University of Minnesota Law School. I am a member of the Bar of the District of Columbia, and a member of the Minnesota State Bar. I have been a civil servant for 20 years, and served in various positions with the Bureau of Indian Affairs and the Office of the Solicitor's Division of Indian Affairs within the Department of the Interior. Unlike many who appear before you, I am neither a political appointee nor a politically connected lobbyist.

I am here today to testify before the Committee on Government Reform and Oversight in its probe into whether political contributions to the Democratic National Committee influenced a decision of the Department of the Interior to refuse to place an off-reservation 55-acre parcel of land located in Hudson, Wisconsin, and known as the St. Croix Meadows Greyhound Track, in trust for gaming purposes. It is also known as the Hudson Dog Track.

I was involved in reviewing the Hudson Dog Track casino application from the time I joined the Indian Gaming Management Staff as its Director in February 1995, through the signing of the final decision letter on July 14, 1995. Throughout this period, I participated in numerous discussions on the subject with civil servants in the BIA and the Solicitor's Office as well as with Secretarial appointees.

To the best of my recollection, all of these discussions were entirely on the merits of the application. As I have told those who have deposed me in this matter, I was never contacted by the White House, the Democratic National Committee, or the Clinton-Gore campaign regarding the Hudson Dog Track matter, nor was I aware of anyone else at the Department of the Interior being contacted by the White House, the DNC, or the Clinton-Gore campaign regarding this matter. I knew nothing and heard nothing during this period about any partisan political contributions, given in the past or expected in the future, having anything to do with this decision. As far as I know, the decision of the Department regarding this proposal was made entirely on the merits. I have never had a conversation with Secretary Babbitt about this or any other matter.

I strongly support Indian gaming as a legitimate economic development activity for Indian tribes. But off-reservation Indian gaming proposals, particularly those that involve partnering with non-Indians, must be more closely scrutinized under applicable legal standards.

In the Winter and Spring of 1995, it was my job to make recommendations to my superiors at the Department in such matters as the Hudson Dog Track. On June 29, 1995, I drafted a recommendation in the form of a proposed letter to the three applicant tribes informing them of the decision of the Department not to exercise its discretionary authority, pursuant to Section 5 of the Indian Reorganization Act, to take the Hudson dog track into trust. I made this recommendation based on the record before me. I was not pressured in any way by anyone to reach a particular recommendation in this matter.

This matter has placed incredible demands on me personally, and I am very eager to put it behind me, and resume devoting my full attention to my responsibilities in carrying out the important work of the Department.

Accompanying me today is Mr. Tim Elliott, Deputy Associate Solicitor for the Division of General Law at the Department of the Interior.

Mr. BURTON. We will now recognize Mr.——

Mr. ELLIOTT. Mr. Chairman?

Mr. BURTON. Yes, sir.

Mr. ELLIOTT. I am Tim Elliott, and I also have a statement I would like to make, if it's permissible.

Mr. BURTON. And what is your position, Mr. Elliott?

Mr. ELLIOTT. I am an attorney with the Department of the Interior and accompanying Mr. Skibine at this hearing.

Mr. BURTON. It is not regular for those other than the witnesses to testify. You weren't called to testify, were you?

Mr. ELLIOTT. No, sir.

Mr. BURTON. Are you here as his legal counsel?

Mr. ELLIOTT. Yes, sir.

Mr. BURTON. Well, you can serve in that capacity, but as far as you making an opening statement, it is not necessary.

Mr. ELLIOTT. Thank you, sir.

Mr. BURTON. Mr. Skibine, we appreciate your being here and we will now yield to Mr. Bennett for 30 minutes.

Mr. BENNETT. Good morning, Mr. Skibine.

Mr. SKIBINE. Good morning.

Mr. BENNETT. Sir, you have been with the Department of the Interior for 20 years; is that correct?

The WITNESS. Yes.

Mr. BENNETT. And, actually, I think February 5, 1995, was your first day on the job as director of the gaming office; is that correct?

Mr. SKIBINE. That is correct.

Mr. BENNETT. And 3 days after arriving on the job you attended a meeting with the congressional delegation of the Minnesota delegation; is that correct?

Mr. SKIBINE. That is correct.

Mr. BENNETT. Had you ever, during your 20-year career with the Department of the Interior, attended a meeting of a congressional delegation?

Mr. SKIBINE. Not that I can recall.

Mr. BENNETT. Were you aware that Mr. Patrick O'Connor, who will be called to testify before this committee next week, were you aware that Mr. O'Connor had in fact organized that meeting?

Mr. SKIBINE. No, I was not.

Mr. BENNETT. You met Mr. O'Connor at that meeting, didn't you, sir?

Mr. BURTON. Would you pull the microphone a little closer, please.

Mr. BENNETT. You, in fact, met Mr. O'Connor at that meeting; isn't that correct?

Mr. SKIBINE. Not to my knowledge.

Mr. BENNETT. Do you recall who was there?

Mr. SKIBINE. Yes, I think in my deposition I recalled who was there based on—and if I can turn to something.

Mr. BENNETT. Go right ahead, sir.

Mr. SKIBINE. Pardon?

Mr. BENNETT. Go right ahead, if you would like. And while we're waiting, if I could have exhibit 297–B placed on the screen here in the hearing room.

While you're looking, Mr. Skibine, this exhibit reflects a meeting having been set up and scheduled by Mr. Patrick O'Connor, an attorney and lobbyist for the Minnesota Indian tribe, which opposed the casino application of the Chippewa Indians. And it is on the screen there before you.

Can you see it there, sir? I believe there is a TV set right there.

[Exhibit 297B follows:]

M P A
MANAGEMENT & PUBLIC AFFAIRS CONSULTANTS
1227 MARION STREET
ST PAUL MN 55117

LARRY KITTO
Phone (612) 488-4855
Pager (612) 527-1177
Fax (612) 487-8088

Tom Rose
Lisa Sosa 7:30

Lewis Taylor
Jeo Butler
Curtis Beanhart

DATE : February 6, 1995
MEMO TO : Lewis Taylor
MEMO FROM : Larry Kitto

REASON . HUDSON DOG TRACK ISSUE

1. On Friday February 3, 1995 Tom Corcoran forwarded to your office a proposed contract which hopefully we can finalize in Washington this Wednesday. I am confident that we can come to agreement on fees.

2. Attached to this memo is a copy of my correspondence sent to you on December 10, 1995 and biographical information on the O'Connor lobbying team.

3. Pat O'Connor of Our firm is working with Secretary Babbitt's office to confirm his participation in the meeting that will be held on Wednesday, February 8, 1995 at 1:300 p.m. in Congressman Oberstar's office. Your name has been added to the list of participants.

4. If you are able to attend the meeting, Tom Corcoran suggests that we meet Wednesday at 11:00 a.m. either at the office on 1919 Pennsylvania Avenue N.W., Suite 800, Phone 887-1400 or at a location convenient to you. If you are unable to be in Washington, We will give you a report on the meeting.

5. While this is an important meting, the issue in all likelihood not be resolved easily. Depending on the outcome, we will outline, for your approval, an action plan involving the Congress and White House to include the following:

- The St. Croix message
- Who the important Washington players are that need to be contacted
- A calendar for carrying out the plan

6. You can reach me in St. Paul at (612) 488-4855 or on my pager (612) 527-1177. I will be staying at the Washington Court Hotel on Tuesday evening. That number is (202) 628-2100.

EXHIBIT
297B

AA 0000021

Mr. SKIBINE. I think my eyes are failing here.

Mr. BENNETT. We're trying to increase the size of the print.

Mr. SKIBINE. OK.

Mr. BENNETT. There is even a reference in that memorandum to who the important Washington players are that need to be contacted. Do you see that on the exhibit?

Mr. SKIBINE. OK, I'm handed a document.

Mr. BENNETT. That is the exhibit that's on the screen and now is in your hand, sir, 297–B.

Mr. SKIBINE. OK, I have it.

Mr. BENNETT. If you would refer to that exhibit, it references this February 8, 1995, meeting, your third day on the job. And if you will note there, about four lines from the bottom, there is reference to important Washington players who need to be contacted. Do you see that there, Mr. Skibine?

Mr. SKIBINE. No. OK. Yes, OK, I do. Yes.

Mr. BENNETT. And do you recall who some of those important Washington players were?

Mr. SKIBINE. What I do have, that was sent to me from a Whalen Peterson, or a Peterson in Representative Oberstar's office, is a list of the people who attended the meeting of February 8th in Congressman Oberstar's office.

Mr. BENNETT. And how many people were in attendance there, sir?

Mr. SKIBINE. OK. On this list that was sent to me——

Mr. BENNETT. First of all, who advised you that there was going to be this meeting, by the way?

Mr. SKIBINE. I'm sorry?

Mr. BENNETT. Who advised you on your third day in office that there was going to be this meeting with the Minnesota delegation?

Mr. SKIBINE. I was called by someone in the Secretary's office.

Mr. BENNETT. Mr. John Duffy?

Mr. SKIBINE. No, maybe, probably his secretary or his assistant, and asked to come up and accompany him to that meeting.

Mr. BENNETT. Was there any explanation as to why you were meeting with a Minnesota delegation in connection with a Wisconsin casino application?

Mr. SKIBINE. No, there wasn't.

Mr. BENNETT. Go ahead, you were trying to recollect who was at that meeting.

Mr. SKIBINE. There are 20 people who are listed here, and if you want I can read them.

Mr. BENNETT. Go right ahead, sir, if you will. Quickly, please.

Mr. SKIBINE. Now, this recollection is based on a memorandum sent by Whalen Peterson to me.

Mr. BENNETT. I understand, sir.

Mr. SKIBINE. It is not necessarily my own recollection.

Mr. BENNETT. I understand.

Mr. SKIBINE. All right. It would be Representative Jim Oberstar, Representative Bruce Vento, Representative David Minge—or Minch/Minge—Senator Paul Wellstone, Representative Bill Luther, MIGA Chairman Myron Ellis, Frank Ducheneaux, Beverly Benjamin, Tadd Johnson, John McCarthy, Stan Crooks, Jeannie Bolen, Bobby Whitefeather, Lewis Taylor, Larry Kitto, Whalen Peterson,

James McKinney, John Schaefler, Mike Eckstein, and Kurt Bluedog.

Mr. BENNETT. Were there any representatives from Hudson, WI, there, sir?

Mr. SKIBINE. Not that I can see.

Mr. BENNETT. Were there any representatives of the Chippewa Indian tribe which had applied for the casino?

Mr. SKIBINE. No.

Mr. BENNETT. Do you know whether there was any discussion, not about the economic impact upon Minnesota tribes or the economics of the application, was there any discussion about detriment to the community, detriment to Hudson, WI?

Mr. SKIBINE. Yes, I think there was.

Mr. BENNETT. Do you have any notes to reflect that conversation?

Mr. SKIBINE. No, but I think that Lewis Taylor, the chairman of the St. Croix Chippewa tribe, was there, and I think he was addressing—that he was there for the purpose of addressing detriment to the St. Croix tribe, which is a Wisconsin tribe.

Mr. BENNETT. Detriment to his tribe?

Mr. SKIBINE. That's right.

Mr. BENNETT. Detriment to his economic interest?

Mr. SKIBINE. Well, detriment to his tribe, yes.

Mr. BENNETT. It would cost his tribe money if the other tribe got the casino approved; isn't that what he was there for, sir?

Mr. SKIBINE. Well, I think he was there to say there would be detrimental impacts on his tribe in general.

Mr. BENNETT. Did you ever notify the Chippewa Indians of who had applied for the casino? Did you notify them of this meeting?

Mr. SKIBINE. We did eventually.

Mr. BENNETT. Eventually?

Mr. SKIBINE. Yes.

Mr. BENNETT. Six weeks later; isn't that correct?

Mr. SKIBINE. That is correct.

Mr. BENNETT. Have you read the opinion of Judge Barbara Crabb of the Federal court in Wisconsin with respect to that 6 weeks' delay, sir?

Mr. SKIBINE. I probably read it at some point a few years ago. I don't recall it right now.

Mr. BENNETT. In fact, there was, I think—if we can have exhibit 302 from yesterday's hearing placed on the projection screen. That, in fact, was a letter from John J. Duffy on March 27, 1995, reflecting that there was at least a 6 weeks' delay prior to even notifying the Chippewa Indians of this meeting. What was the reason for that delay, Mr. Skibine?

[Exhibit 302 follows:]

Heather - As per my e-mail on Sokaogon 02133C

Scott Keep

MAR 27 1995

Honorable Arlyn Ackley Sr.
Chairman
Sokaogon Chippewa Community, Inc.
Rt. 1, Box 625
Crandon, Wisconsin 54520

Jill Hudson dog tank

Dear Chairman Ackley:

As you may know, on February 8, 1995, I met with Senator Paul Wellstone, Representatives Jim Oberstar, David Minge, Bill Luther, Bruce Vento and tribal representatives from the Mille Lacs, Bois Forte, Leech Lake, Shakopee Mdewakanton Sioux, Red Lake and St. Croix Tribes, to discuss their concerns with your application to place land located in Hudson, Wisconsin, in trust for the Sokaogon Chippewa, Community, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians and the Red Cliff Band of Lake Superior Chippewa Indians for gaming purposes.

At this meeting, tribal representatives indicated that they did not believe the Bureau of Indian Affairs (BIA) had complied with the tribal consultation requirements of Section 20 of the Indian Gaming Regulatory Act, and that they lacked sufficient information to adequately respond to your proposed acquisition. They specifically requested that they be granted additional time to submit reports detailing the impact of the proposed acquisition on nearby tribes. We agreed to this request, but did not set a deadline for the submission of this information. In order not to unduly delay consideration of this proposed acquisition, we have advised the parties with whom we met on February 8 that any additional information must be submitted by April 30, 1995, in order to be considered by the Department of the Interior in making the Section 20 determination.

Please be assured that our commitment regarding the submission of additional information will not delay consideration of other aspects of your application by the BIA's Indian Gaming Management Staff. Should areas of concerns with the application be identified, you will be so notified.

Sincerely,

/s/ John J. Duffy

John J. Duffy
Counselor to the Secretary

bcc: Secy Surname, Secy RF(2), 101-A, Bureau RF, Surname, Chron, Hold
BIA:GSkibine:trw:3/16/95:219-4068 wp:a:ackley.dog
corr per JDuffy:trw:3/27/95

EXHIBIT 302

Identical letters sent to: gaiashkibos, Lac Courte Oreilles Band of Chippewa
Rose Gurnoe, Red Cliff Band of Lake Superior Chippewas

Mr. SKIBINE. Well, from my perspective, when I came to the gaming office, I was very new at the job and it took me several weeks, in fact practically the whole month, probably, to just learn the ropes and learn the office and how things were supposed to be done, and essentially catching up on everything, on all the matters that were pressing at the time.

I was also involved in another project which took a lot of time away from the office for me, which was a negotiator in a negotiated rulemaking on the Indian Self-determination Act, for which the Department, the Department of HHS, and 48 tribal representatives, which took a lot of time for me.

And I think that essentially, when I got around to realizing that we needed to set a deadline and to send this out, you know, with the red tape and all, it came out on, what's the date?

Mr. BENNETT. March 27th. In fact, that wasn't even a letter from you. That's from Mr. John Duffy, highlighting the fact that I think Mr. Ackley, who testified yesterday, had confronted him about this meeting.

Do you have any correspondence refreshing that you, sir, ever wrote to the three tribes advising them of this February 8th meeting?

Mr. SKIBINE. Well, I think I wrote the letter for——

Mr. BENNETT. You drafted it for Mr. Duffy.

Mr. SKIBINE. Right.

Mr. BENNETT. Mr. Skibine, you are aware, are you not, of the civil litigation, obviously, in the Federal court in Wisconsin, and the opinions by Judge Barbara Crabb with respect to political influence in the decisionmaking process in this case?

Mr. SKIBINE. I am——

Mr. ELLIOTT. Just a minute. Just a minute, Counsel.

Mr. SKIBINE. I'm aware of the litigation, but I cannot really talk about the opinions.

Mr. BENNETT. Let me put, if I can, up on the projection screen the two quotes from her. One quote, and I will lead in with another just to highlight your recollection on this point, sir, if I can.

Judge Crabb has said in an earlier portion of the opinion, I believe—and this Judge Crabb is a respected jurist from Wisconsin, appointed by President Carter to her position, Mr. Skibine. She states in the opinion, "I believe there is a distinct possibility that improper political influence affected this application."

And then the quote that's there on the television screen here in the hearing room: "There is considerable evidence that suggests that improper political pressure may have influenced agency decisionmaking."

Would you agree with Judge Crabb that improper political influence may have been involved in this matter, Mr. Skibine?

[The information referred to follows:]

"[T]here is considerable evidence that suggests that improper political pressure may have influenced agency decisionmaking..."

Federal District Court Judge Barbara Crabb

Sokaogon Chippewa Communities v. Babbitt

961 F.Supp. 1276, 1286 (W.D. Wis. 1997)

Decided March 19, 1997

Mr. SKIBINE. Can you repeat the question, please?

Mr. BENNETT. Would you agree with Judge Crabb that improper political influence may have been involved in this matter?

Mr. SKIBINE. No, I have no knowledge of that.

Mr. BENNETT. Well, in fact, Mr. Skibine, according to the testimony we've heard here yesterday, as well as some affidavits I will place on the projection screen, you yourself have previously made comments about the political influence killing this application; haven't you?

Mr. SKIBINE. I don't think so.

Mr. BENNETT. Directing your attention, sir, to a meeting in Wisconsin with the Lac Courte Oreilles, at the Lac Courte Oreilles Indian reservation on December 3, 1996, do you recall being asked at that meeting—first of all, did you attend that meeting, Mr. Skibine?

Mr. SKIBINE. Yes, I did.

Mr. BENNETT. Do you recall being asked at that meeting why the Department of the Interior did not approve the application for casino gambling at the Hudson Dog Track facility?

Mr. SKIBINE. No, I do not.

Mr. BENNETT. Do you know whether or not you were asked why?

Mr. SKIBINE. I do not recall being asked that question.

Mr. BENNETT. Would it surprise you to know that there were people who were present there who have testified, Mr. Havenick testified yesterday, Chairman Arlyn Ackley of the Mole Lake Band testified specifically that you made comments about politics in Washington causing the rejection of the Chippewa application?

Mr. SKIBINE. Yes, it would surprise me. If I may——

Mr. BENNETT. Do you know those comments were made yesterday?

Mr. SKIBINE. Do I know those comments were made? Yes, I do.

Mr. BENNETT. Did you watch the proceedings yesterday on C–SPAN?

Mr. SKIBINE. I watched some of it.

Mr. BENNETT. I think we got preempted on television a little bit yesterday on some other matters, but in case you watched on C–SPAN, what is your response to Chairman Ackley and to Mr. Havenick?

And in fairness to you, sir, let me place on the projection screen three affidavits. And recently, this morning, there are additional affidavits. But just initially the affidavits of, first of all, Mr. Fred Havenick, owner of the dog track, these are exhibits, Counsel, 354–1, 2, and 3, and there are three other affidavits that are being marked and will be placed in the record.

[Exhibits 354–1, 354–2, and 354–3 follow:]

AFFIDAVIT OF FRED HAVENICK

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Fred Havenick, being first duly sworn on oath, deposes and states as follows:

1. On December 3, 1996 I attended a meeting at the Bingo Hall of the Lac Courte Oreilles Reservation in Hayward, Wisconsin. The meeting was attended by tribal leaders and representatives of the Bureau of Indian Affairs, including George Skibine.

2. In response to a question about what happened with the Hudson Casino Project, I recall George Skibine saying "staff had approved the application but when it went up to the Secretary's office, politics took over."

Fred Havenick

Subscribed and Sworn to before me
this 15 day of January, 1998.

Notary Public, State of Wisconsin
My Commission's

EXHIBIT
354-1

GALAXY\PLEADING\SKIBINE NO

AFFIDAVIT

AFFIDAVIT OF MARY ANN POLAR

I, MARY ANN POLAR , being first duly sworn under oath, hereby states as follows:

1) That I am an adult resident of the State of Wisconsin, and the duly elected Treasurer of the Sokaogon, Chippewa Community located at Rt. 1, Box 625, Crandon, Wisconsin, 54520

2.) That on December 3, 1996, upon request of the Lac Courte Oreilles, I attended a meeting at the LCO Casino in their Tribal Bingo Hall that was conducted by George Skabine from Washington, D.C., who I believe is a head employee with the Bureau or Department of Interior.

3) That at said meeting, George Skabine was asked why his department killed the deal at Hudson for the Casino at the dog track for the three tribes involved.\.

5) That George Skabine stated it was not his department's fault Hudson was not approved, as it was approved by both Ashland and the Minneapolis office, however, when it got to Washington, politics took over and killed the deal.

Further the Affiant saith not.

Dated this 16 day of Jan, 1998

By Mary Ann Polar
Mary Ann Polar, Tribal Treasurer

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
FOREST COUNTY)

Personally came before me this 16th day of January 1998 the above named Mary Ann Polar, Tribal Treasurer of the Sokaogon Chippewa Community, to me known to be the person who executed the foregoing instrument and acknowledge the same.

Notary Public, Forest County, Wisconsin
My Commission expires: date 04-11-01

Seal

EXHIBIT
354-2

AFFIDAVIT

AFFIDAVIT OF PETER A. LIPTACK

I, PETER A. LIPTACK, being first duly sworn under oath, hereby states as follows:

1.) That I am an adult resident of the State of Wisconsin, residing at 14822 County "F", Lakewood, Wisconsin, 54138, and the Tribal Paralegal of the Sokaogon Chippewa Community, a position that I have held continually since May of 1995.

2.) On December 3, 1996 at the LaCourte Orielle Reservation I attended a meeting with representatives of the Bureau of Indian Affairs; also at the meeting, was George Skabine, Paula Hart, Chairman Ackley, DuWayne Derickson, Sandra Olds, Mary Polar, tribal representatives from L.C.O. and the Red Cliff Tribes;

3.) That on said date, a question was asked of George Skabine as to why his department killed the Hudson Application.

4.) That George Skabine responded by saying that we should not be mad at his department, his department did not kill the deal, it was approved by both the Ashland and Minneapolis Offices. The deal was killed in Washington after politics took over.

Further the Affiant saith not.

Dated this 16th day of January, 1998.

By Peter A. Liptack
Peter A. Liptack

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
FOREST COUNTY)

Personally came before me this 16th day of January, 1998, the above named Peter A. Liptack to me known to be the person who executed the foregoing instrument and acknowledge the same.

Notary Public, Forest County, Wisconsin
My Commission expires: date 04-22-01

Seal

EXHIBIT
354-3

Mr. BENNETT. So you understand the framework of the question, Mr. Skibine, the affidavits are Mr. Fred Havenick, the owner of the dog track, a Mary Ann Polar, treasurer of one unsuccessful tribe, and Mr. Peter Liptak, another tribal official. All of these people have submitted sworn affidavits to this committee essentially saying that you made comments to the effect that your staff had approved the application of the Chippewa Indians, but that when it got to Washington, I think all three of them refer to "politics took over," and the application was rejected.

In light of those affidavits, sir, are you prepared to say that you did not make those comments?

Mr. SKIBINE. Yes. Let me——

Mr. BENNETT. So those affidavits would be false; is that correct, Mr. Skibine?

Mr. SKIBINE. Let me put this in context. We were contacted by the Lac Courte Oreilles tribe to come to Wisconsin to discuss with them the problems that the Wisconsin tribes had with the upcoming renegotiation of their Class III gaming contracts with the State of Wisconsin. And we agreed to come there to make a presentation about compact negotiation. At the same time, the tribes asked us to come and discuss with them, the three tribes, either the day before, to discuss with them and give technical advice on placing land in trust, in general.

We clarified to them that we could not and would not discuss the Hudson—the litigation involving the Hudson Dog Track at this meeting; that our attorneys had advised us that we would be unable to go up to Wisconsin to discuss the Hudson Dog Track matter since it was in litigation. We made that absolutely clear to the Lac Courte Oreilles tribe that this was not going to happen. And they told us that they would inform the other two tribes there that the litigation and whatever happened during the litigation of the Hudson Dog Track would not be discussed.

Now, when we got there, and I was there with—it was myself, Paula Hart of my staff, on the Indian Gaming Staff, Nancy Pierskalla, another staffer on the gaming staff, Troy Woodward, an attorney in the Solicitor's Office who came to handle legal questions, and also to make sure that we did not stray into discussing the Hudson Dog Track litigation, as well as Tim LaPointe was there, he is the gaming coordinator with the Minneapolis area office, and Robert Jaeger, superintendent of the Great Lakes agency, and I think another BIA employee. Now——

Mr. BENNETT. Sir, I don't mean to cut you off. I only have but so much time to answer questions, and I'm just—ask questions, and I'm just trying to ask you, apart from what the meeting was supposed to be about, we have sworn testimony before this committee, in addition to three affidavits, people flat-out under oath saying that you made reference to political pressure in Washington. And I'm asking you, sir, if you deny ever saying that?

Mr. SKIBINE. Yes, I tossed and turned most of the night last night trying to think of what I could have said at this meeting so that it would have been misconstrued.

Mr. BENNETT. Of five different people; four different people.

Mr. SKIBINE. Yes. As to what I may have said that could have led them to make that statement. And I don't want to accuse here anyone of lying. It's not——

Mr. BENNETT. I'm not either, sir.

Mr. SKIBINE. Huh?

Mr. BENNETT. I'm not either.

Mr. SKIBINE. Right. So I'm not going to say that these affidavits are lies; I'm going to say that essentially they, as far as I can see, they must have misconstrued or misunderstood something that I was saying. And I was trying to see and recollect in our conversation what it is that we discussed. And I can tell you what we discussed, if you want.

Mr. BENNETT. Well, I don't need you to go into the details. My point was you deny—you basically disagree with their contention?

Mr. SKIBINE. That's correct.

Mr. BENNETT. OK. And let me show you——

Mr. ELLIOTT. Mr. Bennett.

Mr. BURTON. Let me just say, Mr. Skibine, we want to be as fair to you as possible, but we want to make sure that you understand the gravity of the questions that are being presented to you.

We have six people who are at that meeting, three of them under oath, the other three in sworn affidavits, that you said that political pressure from above was brought to bear upon your decision that had been approved at lower levels.

Now, I want to make sure that you understand the gravity of the question and the gravity of your answer. You are saying you did not say anything like that?

Mr. SKIBINE. That's correct.

Mr. BURTON. Thank you.

Mr. ELLIOTT. Mr. Chairman and Mr. Bennett, we have declarations from the other Interior Department employees who were at that meeting, made under penalty of perjury, as we do under the Federal Rules of Civil Procedure, that indeed no statement like that was made at that meeting.

Mr. BENNETT. As far as I'm concerned, Counsel, you should seek to introduce those into the record. Mr. Chairman, I recommend they be admitted into the record.

Mr. BURTON. Without objection.

[The declarations referred to follow:]

DECLARATION

I, Nancy Pierskalla, under penalty of perjury, hereby declare the following to be true to the best of my knowledge and belief:

1. I have read the affidavits dated January 16, 1998, executed by Arlyn Ackley, Sr., DuWayne Derickson, Mary Ann Polar, and Peter A. Liptak (collectively, the affidavits).

2. The affidavits relate to a meeting held on December 3, 1996 at the reservation of the Lac Courte Oreilles tribe in Wisconsin (the meeting).

3. I attended the meeting and there was no statement by George Skibine or any other attendee from the Department of the Interior to the effect that politics was in any way responsible for rejection by the Department of the application of three Chippewa tribes in Wisconsin to take land in Hudson, Wisconsin into trust for gaming purposes.

Nancy Pierskalla 1/22/98

Nancy Pierskalla date

DECLARATION

I, Troy Woodward, under penalty of perjury, hereby declare the following to be true to the best of my knowledge and belief:

1. I have read the affidavits dated January 16, 1998, executed by Arlyn Ackley, Sr., DuWayne Derickson, Mary Ann Polar, and Peter A. Liptak (collectively, the affidavits).

2. The affidavits relate to a meeting held on December 3, 1996 at the reservation of the Lac Courte Oreilles tribe in Wisconsin (the meeting).

3. I attended the meeting and there was no statement by George Skibine or any other attendee from the Department of the Interior to the effect that politics was in any way responsible for rejection by the Department of the application of three Chippewa tribes in Wisconsin to take land in Hudson, Wisconsin into trust for gaming purposes.

Troy Woodward

Troy Woodward

Jan. 21, 1998

date

DECLARATION

I, Tim LaPointe, under penalty of perjury, hereby declare the following to be true to the best of my knowledge and belief:

1. I have read the affidavits dated January 16, 1998, executed by Arlyn Ackley, Sr., DuWayne Derickson, Mary Ann Polar, and Peter A. Liptak (collectively, the affidavits).

2. The affidavits relate to a meeting held on December 3, 1996 at the reservation of the Lac Courte Oreilles tribe in Wisconsin (the meeting).

3. I attended the meeting and there was no statement by George Skibine or any other attendee from the Department of the Interior to the effect that politics was in any way responsible for rejection by the Department of the application of three Chippewa tribes in Wisconsin to take land in Hudson, Wisconsin into trust for gaming purposes.

Tim LaPointe 1-21-98

Tim LaPointe date

DECLARATION

I, Paula Hart, under penalty of perjury, hereby declare the following to be true to the best of my knowledge and belief:

1. I have read the affidavits dated January 16, 1998, executed by Arlyn Ackley, Sr., DuWayne Derickson, Mary Ann Polar, and Peter A. Liptak (collectively, the affidavits).

2. The affidavits relate to a meeting held on December 3, 1996 at the reservation of the Lac Courte Oreilles tribe in Wisconsin (the meeting).

3. I attended the meeting and there was no statement by George Skibine or any other attendee from the Department of the Interior to the effect that politics was in any way responsible for rejection by the Department of the application of three Chippewa tribes in Wisconsin to take land in Hudson, Wisconsin into trust for gaming purposes.

Paula Hart — 1/21/98

Paula Hart — date

DECLARATION OF ROBERT JAEGER

I, Robert Jaeger, under penalty of perjury, hereby declare the following to be true to the best of my knowledge and belief:

1. I have read the affidavits dated January 16, 1998, executed by Arlyn Ackley, Sr., DuWayne Derickson, Mary Ann Polar, and Peter A. Liptak (collectively, the affidavits).

2. The affidavits relate to a meeting held on December 3, 1996 at the reservation of the Lac Courte Oreilles tribe in Wisconsin (the meeting).

3. I attended the meeting with Diane Rosen until approximtely 3:00 p.m. I do not recall a statement by George Skibine or any other attendee from the Department of the Interior to the effect that politics was responsible for rejection by the Department of the application of three Chippewa tribes in Wisconsin to take land in Hudson, Wisconsin into trust for gaming purposes.

Robert Jaeger 1/21/98

Robert Jaeger date

Mr. BENNETT. Mr. Skibine.

Mr. SHADEGG. Mr. Chairman, may we have copies?

Mr. BURTON. Yes. If you would submit those, we will give copies to the other Members. We will get copies of those. Can we get a staff member down there to do that?

Mr. BENNETT. Mr. Chairman, in light of some of that time, if I may have an additional few minutes, perhaps, in light of some of this delay?

Mr. WAXMAN. Wait, wait. I reserve an objection to that. On what basis is he going to get more time?

Mr. BURTON. We are not going to give any more time than the 30 minutes, Mr. Waxman. We will be here all day if we have to be. Just relax.

Mr. BENNETT. Mr. Skibine, if I can put up on the exhibit screen exhibit—well, don't put that up yet. Let me just ask one question, Mr. Skibine.

Your prepared statement that you read this morning noted that you became the Gaming Management Staff Director February 1995, and were involved throughout the signing of the final decision letter on July 14, 1995. And then I believe your statement, from which I'm reading and I think you read earlier, you say, "I knew nothing and heard nothing during this period about any partisan political contributions given in the past or expected in the future." And then you say, "As far as I know, the decision of the Department regarding this proposal was made entirely on the merits."

I gather, sir, then, that from February 1995 up until July 14, 1995, that's the period about which—to which you were referring when you made your opening statement; is that correct, sir?

Mr. SKIBINE. That is correct.

Mr. BENNETT. And as far as you were concerned during that period there was no politics involved?

Mr. SKIBINE. Not to my knowledge.

Mr. BENNETT. Let me show you exhibit 321 on the screen here in the hearing room.

According to these records, produced by the Department of the Interior, Mr. Skibine, this is an e-mail communication authored by you to members of your staff dated June 30, 1995. And if you will note there, sir, your e-mail communication from you to members of your staff says:

"Even if the Town of Hudson and the Town of Troy embraced the proposal, we may still not change our position because," and it says "FO," and I assume that was meant to be of, it is a typographical error, because of "political opposition on the Hill, largely generated by the Minnesota and Wisconsin tribes who oppose this acquisition."

In light of reviewing your own e-mail in late June 1995, Mr. Skibine, is it still your position before this committee today that political opposition and political pressure had no place in the decisionmaking process with respect to this application?

[Exhibit 321 follows:]

Author: George Skibine at "IOSIAE
Date: 6/30/95 7:04 PM
Priority: Normal
Receipt Requested
TO: V. Heather Sibbison at "IOS
TO: Paula L. Hart
TO: Tom Hartman
TO: TROY WOODWARD at "isol
TO: KEVIN MEISNER at "isol
Subject: Hudson dog track

---------- Message Contents ----------

Tona Wilkins of my staff has the disk on which the document is located. Please ask her to make any changes as necessary. At the very least, if a determination is made that Ada will sign the document, the language regarding appeal rights should be deleted.

I think that our statement regarding the opposition of neighboring tribes is not necessarily inappropriate in the context of a discretionary decision under 25 U.S.C. section 465 and the regs in 25 CFR Part 151. It certainly is a factor, and it would strenghten our defense to an abuse of discretion lawsuit by the three tribes. I also sense that even if the Town of Hudson and the Town of Troy embrace the proposal, we may still not change our position because fo political opposition on the Hill, largely generated by the Minnesota and Wisconsin Tribes who oppose this acquisition. My vote is to leave it in.

Tom Hartman of my staff also prepared a memo regarding the section 20 "not detrimental" analysis. Unfortunately, I have been unable to finish the review because of computer difficulties. Our tentative conclusion is that the record permits us to make a finding that a gaming establishment at that location will not be detrimental to the surrounding community. We have not finalized the document, and I have bnot yet determined whether it should be signed or simply stay in draft form. Please obtain a copy of the draft document from Tom.

03218

EXHIBIT

321

Mr. BURTON. Can you pull the microphone a little closer?

Mr. SKIBINE. Oh, I'm sorry. I think that the opposition of the Congressmen and congressional delegations was a factor that can be considered in denying an application under section 465. It certainly is something that we can rely on in making that determination. That doesn't mean that there was political pressure exerted, as long as they have a reasonable basis for their recommendation.

Mr. BENNETT. And the political opposition of the Minnesota tribes, sir, would be based on what, other than their own economic self-interest?

Mr. ELLIOTT. Mr. Bennett, you're going to have to define politics for this witness.

Mr. BENNETT. I'm not sure if I can, Mr. Elliott. That's a very big question.

Mr. ELLIOTT. Well, it's your question.

Mr. BENNETT. Well, I think I will ask the questions and I don't intend to respond to you, sir, in trying to define politics.

Mr. Skibine, so you understand the setting here, sir, we are not here accusing you of any impropriety. The question here is a matter of whether politics came to bear in this decision.

We have noted affidavits from people that say you talked about it openly, were very candid about it in December 1996. You have now submitted affidavits from people who say they were at the meeting and you didn't make that comment. There is now an electronic mail communication from you, sir, to your staff, during the time period about which you just spoke a few minutes ago in your opening statement where you are talking about politics and political opposition. And I'm trying to clarify it.

It is still your position that politics didn't come into play with respect to the rejection of this casino?

Mr. SKIBINE. I think that maybe I misspoke on the e-mail. What I meant is the opposition of the Minnesota and Wisconsin tribes, based on their opposition to the Hudson casino.

Mr. BENNETT. Mr. Skibine, let's move on to another point, if we can. With respect to the Indian Gaming Regulatory Act and its application, there are essentially two standards that were discussed and can be discussed in more detail, I imagine later, two standards that have to be addressed; isn't that correct, whether it's in the best interest of the tribe applying for the casino and whether there is detriment to the surrounding community? Isn't that correct?

Mr. SKIBINE. Under section 20 of the Indian Gaming Regulatory Act, if the off-reservation acquisition is subject to the two-part determination of section 20, then, yes, there is a two-prong test regarding this.

Mr. BENNETT. And looking at exhibit 328, which, in fact, is the rejection letter signed by Michael Anderson of your staff on July 14, 1995, that makes reference not only to the discretion of the Secretary of the Interior, Mr. Bruce Babbitt, but also makes reference to that particular act, doesn't it, sir, if you want to take a second to look at that?

[Exhibit 328 follows:]

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

TAKE PRIDE IN AMERICA

JUL 14 1995

Honorable Rose M. Gurnoe
Tribal Chairperson
Red Cliff Band of Lake Superior Chippewas
P.O. Box 529
Bayfield, Wisconsin 54814

Honorable Alfred Trepania
Tribal Chairperson
Lac Courte Oreilles Band of Lake Superior
Chippewa Indians
Route 2, Box 2700
Hayward, Wisconsin 54843

Honorable Arlyn Ackley, Sr.
Tribal Chairman
Sokaogon Chippewa Community
Route 1, Box 625
Crandon, Wisconsin 54520

Dear Ms. Gurnoe and Messrs. Trepania and Ackley:

On November 15, 1994, the Minneapolis Area Office of the Bureau of Indian Affairs (BIA) transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes") to place a 55-acre parcel of land located in Hudson, Wisconsin, in trust for gaming purposes. The Minneapolis Area Director recommended that the decision be made to take this particular parcel into trust for the Tribes for gaming purposes. Following receipt of this recommendation and at the request of nearby Indian tribes, the Secretary extended the period for the submission of comments concerning the impact of this proposed trust acquisition to April 30, 1995.

The property, located in a commercial area in the southeast corner of the City of Hudson, Wisconsin, is approximately 85 miles from the boundaries of the Lac Courte Oreilles Reservation, 165 miles from the boundaries of the Red Cliff Reservation, and 188 miles from the boundaries of the Sokaogon Reservation. The St. Croix Band of Chippewa Indians, one of the eight Wisconsin tribes (not including the three applicant tribes), is located on a reservation within the 50-mile radius used by the Minneapolis Area Director to determine which tribes can be considered "nearby" Indian tribes within the meaning of Section 20 of the Indian Gaming Regulatory Act (IGRA).

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Section 20 of the IGRA, 25 U.S.C. § 2719(b)(1)(A), authorizes gaming on off-reservation trust lands acquired after October 17, 1988, if the Secretary determines, after consultation with appropriate State and local officials, including officials of other nearby tribes, and the Governor of the State concurs, that a gaming establishment on such lands would be in the best interest of the Indian tribe and its members and would not be detrimental to the surrounding community.

The decision to place land in trust status is committed to the sound discretion of the Secretary of the Interior. Each case is reviewed and decided on the unique or particular circumstances of the applicant tribe.

For the following reasons, we regret we are unable to concur with the Minneapolis Area Director's recommendation and cannot make a finding that the proposed gaming establishment would not be detrimental to the surrounding community.

The record before us indicates that the surrounding communities are strongly opposed to this proposed off-reservation trust acquisition. On February 6, 1995, the Common Council of the City of Hudson adopted a resolution expressing its opposition to casino gambling at the St. Croix Meadows Greyhound Park. On December 12, 1994, the Town of Troy adopted a resolution objecting to this trust acquisition for gaming purposes. In addition, in a March 28, 1995, letter, a number of elected officials, including the State Representative for Wisconsin's 30th Assembly District in whose district the St. Croix Meadows Greyhound Track is located, have expressed strong opposition to the proposed acquisition. The communities' and State officials' objections are based on a variety of factors, including increased expenses due to potential growth in traffic congestion and adverse effect on the communities' future residential, industrial and commercial development plans. Because of our concerns over detrimental effects on the surrounding community, we are not in a position, on this record, to substitute our judgment for that of local communities directly impacted by this proposed off-reservation gaming acquisition.

In addition, the record also indicates that the proposed acquisition is strongly opposed by neighboring Indian tribes, including the St. Croix Tribe of Wisconsin. Their opposition is based on the potential harmful effect of the acquisition on their gaming establishments. The record indicates that the St. Croix Casino in Turtle Lake, which is located within a 50-mile radius of the proposed trust acquisition, would be impacted. And, while competition alone would generally not be enough to conclude that any acquisition would be detrimental, it is a significant factor in this particular case. The Tribes' reservations are located approximately 85, 165, and 188 miles respectively from the proposed acquisition. Rather than seek acquisition of land closer to their own reservations, the Tribes chose to "migrate" to a location in close proximity to another tribe's market area and casino. Without question, St. Croix will suffer a loss of market share and revenues. Thus, we believe the proposed acquisition would be detrimental to the St. Croix Tribe within the meaning of Section 20(b)(1)(A) of the IGRA.

We have also received numerous complaints from individuals because of the proximity of the proposed Class III gaming establishment to the St. Croix National Scenic Riverway and the potential harmful impact of a casino located one-half mile from the Riverway. We are concerned that the potential impact of the proposed casino on the Riverway was not adequately addressed in environmental documents submitted in connection with the application.

Finally, even if the factors discussed above were insufficient to support our determination under Section 20(b)(1)(A) of the IGRA, the Secretary would still rely on these factors, including the opposition of the local communities, state elected officials and nearby Indian tribes, to decline to exercise his discretionary authority, pursuant to Section 5 of the Indian Reorganization Act of 1934, 25 U.S.C. 465, to acquire title to this property in Hudson, Wisconsin, in trust for the Tribes. This decision is final for the Department.

Sincerely,

Michael J. Anderson

Michael J. Anderson
Deputy Assistant Secretary - Indian Affairs

cc: Minneapolis Area Director
National Indian Gaming Commission

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Mr. SKIBINE. Can I correct something? Mr. Anderson is not on my staff.

Mr. BENNETT. I'm sorry, sir. What is Mr. Anderson's position?

Mr. SKIBINE. I think he is the Deputy Assistant Secretary for Indian Affairs.

Mr. BENNETT. I didn't mean to give you a promotion. Go right ahead.

In light of reviewing that letter, essentially it makes reference to applying that act and those standards to the denial and the rejection of the casino application, doesn't it?

Mr. SKIBINE. Yes, it does.

Mr. BENNETT. And, in fact, with respect to that application, Mr. Skibine, I think Secretary Babbitt, in his opening statement before the Senate Governmental Affairs Committee, has made the following comment, if this can be up on the projection screen—I don't think it's on the screen, but I will quote it for you. It says the Department based its decision solely on the criteria. I think Secretary Babbitt's exact comment is, the Department based its decision solely on the criteria set forth in section 20 of the Indian Gaming Regulatory Act.

In fact, that is not really accurate, is it, sir? And in light of the deposition you gave, that is not a correct statement, was it, Mr. Skibine?

Mr. SKIBINE. That is true, that's inaccurate.

Mr. BENNETT. And why was that statement by Secretary Babbitt which he made before the Senate inaccurate?

Mr. SKIBINE. It is inaccurate because a ground for refusing to take the land into trust is a decision not to exercise the discretionary authority of the Secretary to take land into trust, pursuant to section 5 of the Indian Reorganization Act, 25 U.S.C. 465.

Mr. BENNETT. In fact, Mr. Skibine, with respect to the chronology of these events, you are aware, are you not, that the offices in Ashland, WI, as well as the Minneapolis, MN, office had approved this application; isn't that correct?

Mr. SKIBINE. No, they had made recommendations.

Mr. BENNETT. They had made recommendations. Excuse me, sir, they had not rejected the application; isn't that correct?

Mr. SKIBINE. That's correct.

Mr. BENNETT. They had not found any detriment to the surrounding community?

Mr. SKIBINE. That is correct.

Mr. BENNETT. If I can ask, you said you had no knowledge of any involvement of the White House with respect to the rejection of this application. Was that your testimony, sir?

Mr. SKIBINE. Yes, it is.

Mr. BENNETT. If I can have exhibit 317 placed on the screen, please, and the exhibit is there before you, Mr. Elliott.

Looking at exhibit 317, Mr. Skibine, that is, in fact, a memorandum to Miss Jennifer O'Connor from Mr. David Meyers. Do you know Mr. Meyers, Mr. Skibine?

[Exhibit 317 follows:]

MEMORANDUM

To: Jennifer O'Connor

From: David Meyers

Date: June 6, 1995

Re: Wisconsin Dog Track

Jennifer, I spoke with Heather Sibbison regarding the status of the Wisconsin Dog Track announcement. Interior will make an announcement in the next two weeks. At that time, they are 95% certain that the application will be turned down. She explained that there is significant local opposition. Much of the opposition, however, is a by-product of wealthier tribes lobbying against the application. Therefore, they still want to receive public comment in making a fair determination regarding the application.

Nonetheless, she stated that they will probably decline, without offering much explanation, because of their "discretion" in this matter. She asked that if you have any feedback please call her with your thoughts.

Finally, she asked that this information be kept quiet because it is not public information yet.

EOP 064250

Mr. SKIBINE. No, I do not.

Mr. BENNETT. Have you ever met him?

Mr. SKIBINE. No, I have not.

Mr. BENNETT. This is from the White House, and it reflects that Mr. Meyers spoke with Heather Sibbison regarding the status of the dog track application. And this memorandum is dated June 6, 1995. Who is Heather Sibbison?

Mr. SKIBINE. Heather Sibbison is a special assistant in the Office of the Secretary.

Mr. BENNETT. And works for the Department of the Interior?

Mr. SKIBINE. Yes, she does.

Mr. BENNETT. Do you know why Ms. Sibbison would be talking to people at the White House about this application?

Mr. SKIBINE. No, I do not.

Mr. BENNETT. Can you imagine any circumstance under which she would want to be talking to the White House and advising them of the status of a matter such as this?

Mr. SKIBINE. You would have to ask her.

Mr. BENNETT. You yourself could not provide any justification for that; could you, sir?

Mr. SKIBINE. Excuse me?

Mr. BENNETT. I say you yourself could not provide any justification for that? You weren't on the phone talking to the White House, were you?

Mr. SKIBINE. I was not.

Mr. BENNETT. Let me show you, if I may, sir, in terms of the chronology here, to move through with my time, exhibit 317–A, which was the—this is, in fact, a draft memorandum prepared by Tom Hartman. Mr. Hartman is on your staff, correct?

[Exhibit 317A follows:]

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

Indian Gaming-Management
MS-2070

June 8, 1995

To: Director, Indian Gaming Management Staff

From: Indian Gaming Management Staff

Subject: Application of the Sokaogon Community, the Lac Courte Oreilles BAnd, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)[1]

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables.

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[1] References are to the application documents submitted by the Minneapolis Area Office.

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Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period for Indian tribes in Minnesota and Wisconsin was extended to April 30, 1995 by John Duffy, Counselor to Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act. 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
Chairman, St. Croix County Board of Supervisors, Hudson, WI (Vol. III, Tab 2*)
Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

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*response is under same Tab.

The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)

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2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**
6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
11) Chairman, Bois Forte (Nett Lake) Reservation Business Committee (Vol. III, Tab 16***)
12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)
15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab
***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in the statement: "...it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

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317A-3

Hudson Dog Track Application

The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 stating that the resolution "does not retract, abrogate or supersede the April 18, 1994 Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the

County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, "Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment ($150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

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Hudson Dog Track Application

The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1¼ % of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all businesses, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its Global Gaming Almanac 1995, is expected to increase to $1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

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Hudson Dog Track Application

The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin
In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes
On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of $450 million in 1993, and $495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be $114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were $80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market of $480 million, a Non-Minneapolis Gaming Market of $220 million, and a Wisconsin Market of $500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western

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Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over $600 million.

The projected Hudson market share of $80 to $115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by $50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5% ($25 million) Therefore, only $5 to $40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of $1 to $8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a $96.8 million net profit in 1993. A reduction of $8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At $96.8 million, the per enrolled member profit at Mystic Lake is $396,700. Reduced by $8 million, the amount would be $363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. I, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are not equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting a several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from $25 million in 1995 to $12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to re-order its spending plans.

Market Saturation.
The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of $500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts

1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers
The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime
Hudson Police Dept. Crime & Arrests, (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the *St. Paul Pioneer Press* with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell

3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm to Area Businesses

A. Wage Level
The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns
One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

IV. Property Values
An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bieraugel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkead, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase
Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

DRAFT

2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500; and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities
St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning
According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water
The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage
The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

V. Roads
The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94.

The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis

The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, " . . . it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

DRAFT

03205

EXHIBIT

317A-12

Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects $42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of $18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay $1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

DRAFT

EXHIBIT

317A-14

Hudson Dog Track Application

Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 -- a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians

are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto* giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

Hudson Dog Track Application

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EXHIBIT
317A-17

Mr. SKIBINE. Mr. Hartman was on my staff.

Mr. BENNETT. And where is Mr. Hartman now assigned?

Mr. SKIBINE. He is assigned in the Indian Gaming Management Staff, but I no longer work there.

Mr. BENNETT. And, basically, in that draft memorandum, June 8, 1995, Mr. Hartman notes that he recommends—and look at the language if you want, sir, it is on the screen, and it is before you—that the Secretary, Secretary Babbitt, based on the following, determined that the proposed acquisition would not be detrimental to surrounding community. Do you see that language there, sir?

Mr. SKIBINE. Yes. Can I make one comment?

Mr. BENNETT. Go right ahead, sir.

Mr. SKIBINE. For future reference, those TVs on the table are—either my eyesight is absolutely horrendous, or they are totally unacceptable in terms of being able to see what is there.

Mr. BENNETT. So noted. I apologize to you, sir.

Mr. SKIBINE. But Mr. Elliott has given me the documents.

Mr. BURTON. Do you not have the documents before you?

The WITNESS. Yes, I do.

Mr. BURTON. Well, refer to them, then, if you cannot see it on the screen.

Mr. BENNETT. In fact, it is clear, is it not, that in that draft there is a draft recommendation by a member of the staff that the Secretary must determine that the proposed acquisition would not be detrimental to the surrounding community; isn't that correct? That is the language there, isn't it?

Mr. SKIBINE. That's correct.

Mr. BENNETT. And are you aware of the fact, sir, and I understand you have not read all the legal documents in the court challenge in Wisconsin, but Judge Crabb, the judge in the civil case, has even commented upon the complete turnaround in the position of the Department of the Interior from the date of that memorandum, June 8, 1995, to the ultimate rejection. Are you aware that she has talked about that turnaround, sir?

Mr. SKIBINE. No, I have no recollection of that.

Mr. BENNETT. Let me show you, if I can, a series of e-mail communications from your office. Let's look first at exhibit 322, which is, I think, an e-mail communication, sir, to you from Heather Sibbison, the same individual who had been in contact with the White House.

Has Mr. Elliott been able to find that exhibit yet to put it before you?

[Exhibit 322 follows:]

[193] From: George Skibine at -IOSIAE 6/30/95 3:53PM (13605 bytes: 1 in, 1 fi)
To: TROY WOODWARD at -DOI,SOL_HQ, V. Heather Sibbison at -IOS
Receipt Requested
Subject: Re[2]: Revised Hudson draft
---------- Message Contents ----------

Item 1: Text_1

Whatever you decide. I'll be here until about 7:00 PM tonite. Next week, Paula will be out on Monday, but back on Wednesday. YOu may also work with Tom Hartman who will be acting on Monday. Wednesday, Larry Scrivner of my Lakewood office will be acting here until I get back. In Vermont, I can be reached at the following number: 802/763-7497. Let me know.

---------- Reply Separator ----------
Subject: Re: Revised Hudson draft
Author: V. Heather Sibbison at -IOS
Date: 6/30/95 11:50 AM

George, Troy:

I am faxing the dogtrack letter to Duffy this morning; he promised to try to get back to me by this afternoon. I thought the letter looked very good, and had only two suggestions. One is that we may not want to include in our rationale the opposition of the other tribes, because I think it is possible that if the three Tribes came back with stellar support from their local towns and Congressman, we might look at the proposition in a new light -- but even in that case, the Minnesota tribes will still be against it. And also, I agree with Collier's uneasiness about some tribes getting all of the goodies at the expense of other tribes -- theoretically they all should have equal opportunities.

The other thing is that I think we should have Ada sign it instead of Hilda, because I do think there is a good chancew that they will appeal, and I think they would be better off focusing their efforts on trying to build a consensus in the local towns.

Anyway, assuming that Duffy gets back to us today, do you want to try to get it out before you leave today George? Or do you want to not be crazed and I can work with Paula on it next week?

Thanks. H

EXHIBIT
322

Mr. SKIBINE. Yes, I have it before me now.

Mr. BENNETT. With respect to exhibit 322 placed before you, do you see—I note that she makes reference to not including in the rationale the opposition, or the opposing tribes, noting that regardless of what happens, the Minnesota tribes will still be against it. She also makes reference to the uneasiness of Mr. Collier. Who is Mr. Collier, sir?

Mr. SKIBINE. Mr. Collier was Secretary Babbitt's Chief of Staff.

Mr. BENNETT. And she makes reference to some tribes getting all the goodies at the expense of the other tribes. Do you see that language there?

Mr. SKIBINE. Yes.

Mr. BENNETT. I also note that she made a comment. I would like to get your reaction to this, sir, as a career Department of Interior employee. Theoretically, she says in her e-mail, theoretically they should all have equal opportunities.

Do you believe that the matter of the tribes having equal opportunities is just theoretical, Mr. Skibine?

Mr. SKIBINE. I'm not sure I understand the question.

Mr. BENNETT. I am not sure if I understand what she meant by "theoretical." That is why I am asking you. She is talking about the raw opposition of the Minnesota tribes, and she says theoretically they should all be treated equally. And I am asking what your reaction is to that e-mail from a member of your staff to you whether it is theoretical that they should all be given equal opportunity.

Mr. SKIBINE. First, Ms. Sibbison is not on my staff.

Mr. BENNETT. I am sorry, Ms. Sibbison of the Department of the Interior. My question, sir, is not whether she is on your staff.

Mr. SKIBINE. I want to make sure that all these people——

Mr. BENNETT. OK, fine. My question to you, sir, is noting that language, do you believe it is theoretical that the Indian tribes should all be treated equally?

Mr. SKIBINE. You know, I don't know what she meant by that or what Mr. Collier meant by that, and I don't even want to speculate on that.

Mr. BENNETT. And referring back to your e-mail, in June also, the matter of political opposition on the Hill, I gather that you don't deem that it is theoretical with respect to that type of opposition?

Mr. SKIBINE. With respect to——

Mr. BENNETT. I mean, my point is that your comment back to her—that your e-mail communication with respect to political opposition didn't address the matter of whether it is theoretical that they should be given equal opportunity?

Mr. SKIBINE. I think what I said in my e-mail is that for purposes of my draft letter, I wanted to keep in there, in refusing to take the land into trust under—to err on the side of discretion under section 465—to keep in there the opposition of the Minnesota tribes. And we don't have a list of the Minnesota delegation and their reasons, but that that was a factor that I certainly considered.

What she is saying here is that she disagrees with me, and she says that, in fact, if it is—if the three tribes come back with self-

support from their local towns and Congressmen, the Secretary's office may look—might look at the proposition in new light.

Mr. BENNETT. Mr. Skibine, let me refer you—I am running out of time here. I am not trying to cut your answers short, but if I can have exhibit 323 up on the screen, please, that is an e-mail communication to you from Mr. Kevin Meisner. Again, I don't know if he's on your staff, but he's with the Department of the Interior.

That e-mail notes to you, sir, that all objections of surrounding communities, including Indian tribes, are not enough evidence of detriment to the surrounding community, do you see that there, sir?

[Exhibit 323 follows:]

Author: KEVIN MEISNER at ~DOI/SOL_HQ
Date: 7/6/95 10:37 AM
Priority: Normal
TO: TROY WOODWARD
TO: George Skibine at ~IOSIAE
TO: Paula L. Hart at ~IOSIAE
TO: Tom Hartman at ~IOSIAE
TO: Larry Scrivner at ~IOSIAE
Subject: Re: 7/6/95 Meeting on Hudson Dog Track
---------- Message Contents ----------

My view on this matter is that the bald objections of surrounding communities including Indian tribes are not enough evidence of detriment to the surrounding communities to find under section 20 of IGRA that the acqusition for gaming will be detrimental to the surrounding communities.

Specific examples of detriment must be presented by the communities during the consulation period in order for us to determine that there will be actual detriment. A finding of detriment to surrounding communities will not hold up in court without some actual evidence of detriment. In this case the gaming office did not think that the information obtained during the consultation period was enough to show actual detriment to the surrounding communities.

I think that a decision not exercise our discretionary authority to take the land into trust under 151 is enough to show surrounding communities that we take into consideration their opposition and that casionos will not be foisted upon them against their will.

EXHIBIT NO. 16
P.E. 9-29-97

EXHIBIT
323

03215

Mr. SKIBINE. Yes, I do.

Mr. BENNETT. Let me ask you this in concluding, because my time is up, Mr. Skibine. At any point in time does your file reflect you contacting, you as the director of this office, contacting these Indian tribes which had applied for the casino and advising them of any problems; giving them an opportunity to cure any defects? Is there any letter from you, anything that would have given the Chippewa Indians an opportunity to cure any defects in their application?

Mr. SKIBINE. I think that we—on March 27th we sent the tribes a letter advising them of the extension of the comment period. We had several meetings with the tribes and with Mr. Havenick and Mr. Moody and Mr. Eckstein, and numerous telephonic conversations with tribal staff, where the problems that we had with the applications were communicated to them.

The file that was generated, or the record that was generated on the extended comment period was submitted to the three tribes, and I believe in the record they submitted their comments following review of the documentation.

Mr. BENNETT. Mr. Chairman, I believe I'm out of time. Thank you, Mr. Chairman.

Mr. BURTON. Mr. Waxman, you are recognized for 30 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman. First of all, I am going to yield to Mr. Cummings 3 minutes of my time.

Mr. CUMMINGS. Thank you very much, Mr. Waxman.

Thank you, Mr. Skibine, for appearing before this committee this morning.

Mr. SKIBINE. Good morning.

Mr. CUMMINGS. I represent an area of Maryland that is close to where you live, and I am also the ranking member of the Civil Service Subcommittee, and a Member that represents thousands of Federal employees, like yourself, that have dedicated their lives to serving the American public.

I read your deposition, and there are parts of it that trouble me deeply. I am not troubled by your answers, because I truly believe that you answered truthfully. I am troubled by the way you were interrogated for more than 7 hours. That is a long time.

It should be noted that your deposition before the Senate Governmental Affairs Committee took slightly less than 2 hours. In this committee's deposition you were questioned for nearly 7 hours without regular breaks. That is like a full-time job. And the deposition was continued to the following day.

The American public should know, and my colleagues should know, that this man is a diabetic, a condition that requires Mr. Skibine eat at regular intervals. I have often said we have one life to live, and this is no dress rehearsal, and this is the life. He was not able to do that, to address his medical needs during that 7-hour deposition.

During Mr. Skibine's deposition, he was accused of taking orders on how to rule on this application by one of my colleagues on the other side of the aisle and of being—and was accused of being undemocratic. Undemocratic. For that, Mr. Skibine, I am truly sorry.

I think it is admirable that you joined the Department of the Interior more than 20 years ago because you were interested in In-

dian affairs and because of your Indian heritage, and you thought you could serve your country, serve your people, and do it with integrity and dignity. Throughout your 20-year career, this is the first and only time either publicly or privately that your integrity in applying the law and in performing your duties as a career servant has been challenged.

I believe that you made your decision because you felt under the law and under the facts presented that it was right. I thank you again, and I yield back the time to Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Cummings.

Mr. Skibine, I am going to play——

Mr. SKIBINE. Good morning.

Mr. WAXMAN. Good morning. Thank you for being here.

I am going to play the role that Mr. Bennett, the counsel, played on the other side just to get some of the facts on the record, but I am also an elected Member of Congress and a member of this committee, and I want to get to the truth of the matter. That seems to me our only objective. It shouldn't be to badger you or try to pressure you to say something that is not accurate.

You have been with the Department of the Interior since what year?

Mr. SKIBINE. 1977.

Mr. WAXMAN. And you have been involved in Indian issues for much of that time; is that correct?

Mr. SKIBINE. Yeah, for all of it.

Mr. WAXMAN. And you have been with the Department for a little more than 20 years total, when we look at coming in 1997. You have served, therefore, both Democrats and Republicans. You are a career civil servant. You were not appointed as a political appointee, were you?

Mr. SKIBINE. No, I was not.

Mr. WAXMAN. Is it correct to say that during your career you have attempted in your various positions to improve the livelihood of the American Indian?

Mr. SKIBINE. Yes, that is part of the mission of the Bureau of Indian Affairs.

Mr. WAXMAN. You were at the center of the Interior Department's consideration of the application by these three tribes, with Mr. Havenick, for the Department of the Interior, to take them on as a Federal—under Federal aegis so that they could open up a Las Vegas style casino?

Mr. SKIBINE. That's correct.

Mr. WAXMAN. In fact, you were the career civil servant at the Bureau of Indian Affairs responsible for making the final staff recommendation on this matter?

Mr. SKIBINE. That is correct, yes, in the Indian gaming office.

Mr. WAXMAN. OK. You also supervised the career staff at the central office who reviewed the application?

Mr. SKIBINE. That's correct.

Mr. WAXMAN. So if anyone is in a position to know of improper political influence, it is you?

Mr. SKIBINE. If there was improper political influence brought to bear on the Indian gaming office, yes.

Mr. WAXMAN. OK. And your judgment was this decision was made on the merits and only on the merits?

Mr. SKIBINE. My judgment is that my recommendation was made on the merits.

Mr. WAXMAN. OK. Was the decision to deny the application based on the recommendations of career staff, including yourself?

Mr. SKIBINE. I wrote my recommendation on June 29, 1995, and it was the blueprint or the basis that was used for the final decision issued July 14, 1995.

Mr. WAXMAN. Now, I asked the chairman of this committee to allow Hilda Manuel, sitting behind you, to testify. Is she your superior?

Mr. SKIBINE. She was my supervisor when I was the Director of the Indian gaming office, yes.

Mr. WAXMAN. Her deposition was taken, and it is now part of the record, so people can read it, but had she been allowed to testify, she would have said that she had been in the Department since 1991, when Secretary Lujan was the head of the Department of the Interior, and she was not aware of any political contributions by the tribes opposed to the casino; and that she talked to Secretary Babbitt, and Secretary Babbitt did not take a position on the issue and did not want to be briefed on it. He said it was my responsibility, is the quote from Hilda Manuel. And the recommendation to reject the application was made by career civil servants. The decision was based on the record, and she agreed with it.

I think it would have been helpful for us to have that testimony. You have never talked to Secretary Babbitt, I assume?

Mr. SKIBINE. I have not.

Mr. WAXMAN. But she had, and, according to her testimony under oath, she said Secretary Babbitt said, you take care of it. You're the ones in charge.

Now, that story contradicts what the message the Republicans who run this committee want to get out. It may be the truth, but it is not the message they want out.

Now, we had Fred Havenick here yesterday, and he has been attacking the Department of the Interior for more than 2 years in an effort to overturn the Hudson decision and develop his casino. In all that time he never, at least to my knowledge, made any accusations about you. But yesterday at our hearing he described a December 3, 1995, meeting that he and several tribal officials had with you and other Interior Department officials at the Lac Courte Oreilles reservation in Wisconsin.

And according to Mr. Havenick, you said at that meeting that politics killed the application. I also understand that four tribal participants gave affidavits that say essentially the same thing.

Now, Mr. Bennett asked you about it. I would like to give you a chance to respond. Did you ever say at that meeting that politics killed the application?

Mr. SKIBINE. No, I don't recall saying that.

Mr. WAXMAN. Did you say in any other way that politics was responsible for the Interior Department's rejection of the Hudson application?

Mr. SKIBINE. No, I—and I'm not accusing Mr. Havenick of lying. The only thing, as I said to the chairman, is that he may have mis-

construed something I said, and if that happened, then, I'm very sorry.

Mr. WAXMAN. Well, you are being very kind. But let's face something, and I am not asking you a question, but let's face the fact that Mr. Havenick, and all the people that submitted affidavits that are contrary to your statement, all had a financial interest in overturning this decision by the Department of the Interior.

Now, at the meeting with you was Troy Woodward; is that correct?

Mr. SKIBINE. That is correct.

Mr. WAXMAN. And was Tim LaPointe there?

Mr. SKIBINE. That's correct.

Mr. WAXMAN. And Paula Hart?

Mr. SKIBINE. That is correct.

Mr. WAXMAN. Robert Jaeger?

Mr. SKIBINE. Right.

Mr. WAXMAN. Nancy Pierskalla?

Mr. SKIBINE. Correct.

Mr. WAXMAN. Now, I have affidavits from these people. Robert Jaeger said,

> I, Robert Jaeger, under penalty of perjury hereby declare the following to be true to the best of my knowledge and belief. I have read the affidavits dated January 16, 1998, executed by Arlyn Ackley, Sr., DuWayne Derickson, Mary Ann Polar, and Peter A. Liptak, collectively called the affidavits. The affidavits relate to this meeting on December 3. I attended the meeting with Diane Rosen until approximately 3 p.m. I do not recall a statement by George Skibine, or any other attendee from the Department of the Interior, to that effect; that politics was responsible for rejection by the Department of the application of the three Chippewa tribes in Wisconsin to take land in Hudson, Wisconsin, into trust for gaming purposes.

Same statement by Paula Hart:

> I attended the meeting, and there was no statement by George Skibine or any other attendee from the Department of the Interior to the effect that politics was in any way responsible for rejection by the Department of the application.

Same thing with Tim LaPointe. He said there was no statement by George Skibine or any other attendee to the effect that politics was in any way responsible for the rejection of this application.

And Troy Woodward says the same thing, and Nancy Pierskalla says the same thing.

We have made these already a part of the record. This is what the chairman put to us a few minutes ago for a unanimous consent request.

These are people who are career civil servants. They were at that meeting, and they have all said that. Even though you have racked your brain, did you say something that was misconstrued? They were at that meeting, and they never heard you say what is now later being alleged that you said, as those people who are claiming it are trying to get the decision overturned on the basis that there was some kind of political interference.

Mr. Havenick made another allegation yesterday never before heard. Apparently he and his publicist, or attorney, or whoever handles his strategies, kept quiet about it for 2 years during litigation on the Hudson casino matter and during the entire course of the Senate's investigation. He said he talked with Terry McAuliffe after the decision had been made, and Terry McAuliffe, not know-

ing that Mr. Havenick was behind the casino project, took credit for killing it.

Did you ever discuss the Hudson application with Terry McAuliffe?

Mr. SKIBINE. I do not know Terry McAuliffe, sir.

Mr. WAXMAN. Did you ever discuss it with anyone acting on Mr. McAuliffe's behalf?

Mr. SKIBINE. Not that I know.

Mr. WAXMAN. Don Fowler; do you know him? Did you ever talk to him?

Mr. SKIBINE. No, I do not know him, nor have I talked to him.

Mr. WAXMAN. Did you talk to anybody from the Democratic National Committee or the Clinton-Gore 1996 campaign on this issue?

Mr. SKIBINE. No, I have not.

Mr. WAXMAN. Do you have any reason to believe that Terry McAuliffe or any outside interest affected the decision in the Hudson casino matter?

Mr. SKIBINE. No, I have not.

Mr. WAXMAN. Now, there is political interference, and sometimes it is appropriate and sometimes not. I gather the delegation from Minnesota in the House of Representatives didn't like this request to have a casino a few 30 miles away from St. Paul, because they just thought it would interfere with the concerns of the local people. Did they raise an issue with you?

Mr. SKIBINE. They raised this issue, yes.

Mr. WAXMAN. Now, these are elected officials raising concerns about their constituents.

Mr. SKIBINE. That's correct.

Mr. WAXMAN. Is that unusual?

Mr. SKIBINE. That is not unusual at all, no.

Mr. WAXMAN. Do you consider that political interference?

Mr. SKIBINE. No. I think that, in fact, since I have been in the Gaming Office after Hudson, well, I think that when an issue, an Indian gaming issue, arises, and especially relating to plans by an Indian tribe to build a casino on—close and on Indian communities in general, the local Representatives—the U.S. Representative in that district will contact us to discuss this issue. I think that——

Mr. WAXMAN. Now, when we make judgments as to what is appropriate political interference and what is not, there is a line to be drawn, because we represent our constituents. We represent points of view that we want people in the Government bureaucracy to know about.

But I have a report from the Roll Call newspaper, and the chairman of this committee was accused, after having gotten a contribution from a medical school called Ross Medical School, and after having gotten his daughter into the school, of calling in the head of the Department of Education—I may be wrong about whether his daughter got into the school or not.

Mr. BURTON. Will the gentleman yield, since you referred to my daughter? My daughter is married. She is a pharmaceutical representative. She did not go to that medical school, period.

Mr. WAXMAN. Then I am mistaken.

Mr. BURTON. And in no——

Mr. WAXMAN. I am on my time, Mr. Chairman.

David Longanecker, the Clinton administration's Assistant Secretary for Postsecondary Education, said in an interview with Roll Call that he was summoned to a meeting with Burton and six other Members of Congress last July 18. The meeting was called to discuss all medical schools in Dominica, but Longanecker said Ross University was a prime topic of conversation. Burton confirmed that six other Members attended, but he didn't reveal their names.

The meeting occurred 6 days after Ross's wife, Ann, contributed $1,000 to Burton's campaign, according to the Federal Election Commission records. Ross had already contributed $1,000 to Burton's campaign in July 1995.

My point is this: If you want to make things look ugly, if you want to say things are wrong, that there is improper political interference, you can say it. Now, the chairman disagrees, but if he had been a member of the Clinton administration using his influence in this kind of circumstance, we would probably have a whole hearing on the matter, even though Mr. Burton would argue that it was appropriate for him, and it may well be, to interfere in the decision that is being made by the Department of Education, not on anything that had to do with his constituents, but on some campaign contributor's concern about an application before the Department of Education.

Mr. Skibine, your attorney made a statement about the poor treatment you received by this committee, and I think we ought to give him an opportunity to make his comments, and I want to call on your attorney who is sitting at the table if he wishes to make a statement in this regard.

Mr. ELLIOTT. Thank you for the opportunity, Mr. Waxman. I will be brief.

Mr. BURTON. The attorney is not a witness, and the attorney will not make a comment. It is up to Mr. Skibine. You have not been sworn. You are not a witness before this committee.

Mr. WAXMAN. Mr. Chairman, yesterday Mr. Havenick's lawyer was permitted to give testimony before the committee, and he was not sworn.

Mr. SOUDER. Parliamentary inquiry. Parliamentary inquiry.

Mr. BURTON. Who is making the inquiry?

The gentleman from Indiana is recognized.

Mr. SOUDER. I was in the Chair when you left, and my understanding was that our precedent is that counsels can make supplementary statements, but to ask them direct questions and give the statements is going beyond where I think we were yesterday.

Mr. BURTON. One second, we will chat with our parliamentarian.

Mr. WAXMAN. Well, perhaps I can resolve it by simply asking questions rather than having him give statements.

Mr. BURTON. Just 1 second, we will check with our parliamentarian. We will not take away from your time, so relax.

The rules of the House according to our parliamentarian do not allow direct questioning of legal counsel. He is here to advise his client and his client is to respond.

Mr. WAXMAN. When we had David Wang before this committee, the chairman allowed Mr. Wang's attorney to make a lengthy

statement about his client's rights, and we can look, I refer you to the record on that issue.

Mr. BURTON. If I did, I was in error. The rules of the House will be followed by this committee henceforth.

Mr. WAXMAN. It appears, Mr. Chairman, the rules are invoked when it is to our detriment but they are ignored when they are to your advantage. Mr. Skibine——

Mr. SOUDER. I would like to make a parliamentary point and not take it from Mr. Waxman's time. Yesterday it was not the Republicans who were asking the questions of the counsel. It was Mr. Waxman. If it was lenient, it was to his benefit.

Mr. BURTON. The rules of the House will be followed.

Mr. WAXMAN. As I understand, Mr. Elliott wanted us to know that he has practiced law since 1964. He has been a career civil servant with the Department of Interior since 1974. Over the past 2 months he accompanied current and former employees of the Department to depositions in this and the Senate's investigation. And Mr. Skibine testified voluntarily at his depositions and he is fully prepared to do so here without a subpoena.

Despite the fact that your resolution for this investigation states that the investigation is being conducted to look into political fundraising and possible violations of law, there has been a decided lack of interest in getting at the truth, of finding whether there may have been violations of law. Rather, from the manner of examination of the witnesses, the majority staff and at least one Member of Congress questioned deponents as if their conclusions were predetermined.

For example, Mr. Skibine testified for some 4 hours at his Senate deposition on these matters. Then he testified again for over 7 hours before the staff of this committee. Time and again his judgment and the recommendation he made was questioned. Once he stated the facts leading up to and involved in his recommendation, he was repeatedly asked why he did not do things differently. He was, in my view, according to his lawyer, badgered, but he continued to state he had exercised his best judgment. Despite representations to his lawyer that there was no intent to cover ground already covered in the Senate deposition, staff repeatedly questioned him on matters covered before the Senate.

Congressman Horn attended his deposition for the first 7 hours. Regrettably Mr. Horn impugned Mr. Skibine's integrity and made assertions about his testimony with no basis in fact for them. Mr. Skibine and I both resent the Congressman's statements.

It has been my experience and the research I have done bears out that in the courts of this country witnesses are provided copies of their prior testimony or depositions to use to prepare themselves for further testimony, yet we have had to beg and argue to the point of invoking principles of fundamental fairness to citizens of this country in our attempts to assure that the witnesses were afforded this right in this investigation. It should boggle the mind of every member of this committee that individuals are treated this way.

Finally, I attempted to have another member of the Solicitor's Office more knowledgeable than I about our litigation accompany me to at least one deposition so as better to protect the position of

the United States in our ongoing litigation. I intended to do so for witnesses who have filed affidavits in the litigation and will likely testify in the case. This was denied. I believe such added representation was appropriate, especially in light of representations by the staff that they had no intent to inquire about issues in litigation. I find it difficult to believe that the committee countenances a refusal to allow this added protection of a witness from potential perjury.

I trust it is the committee's intent to get at the truth rather than a predetermined result in this case. All of our witnesses today and next week are devoted to reiterating the truth as they have already related to the staff in their prior testimony.

This according to Mr. Timothy Elliott.

Mr. Skibine, you are a career civil servant. You have given us your testimony that you used your best judgment. I apologize to you if you are telling the truth, that you have been badgered, and I expect you are going to have to prepare yourself to be badgered for quite a while today because as this committee has operated in the past, Republican members have badgered witnesses unless they say exactly what they want them to say. That is to me inappropriate. It is unfair. It is not the way things should be done.

I want you to know that if your integrity is being called into question, you appropriately should feel concerned about it. But you should accept that what goes on in this committee is politics. Maybe not in the decisions that you made, but in this committee it is politics.

Your testimony, just so we understand it, it is very clear, you have said that as a public servant your integrity has never been called into question. Is that accurate?

Mr. SKIBINE. That is true.

Mr. WAXMAN. And your testimony further is that your decision was made on the merits without any political interference. Is that accurate?

Mr. SKIBINE. That's correct.

Mr. WAXMAN. Well, that is the point of this hearing. That is what we are all here to discuss. Yesterday all the members on the other side and some maybe on our side said, "Whoa, I am against gambling. This decision was absolutely right, but we think the decision was made for the wrong reasons."

Yet they haven't been able to show it is for the wrong reasons except for those who didn't like the decision. That is what we are faced with, people who didn't like the decision now filing affidavits and making claims, sometimes quite late, because they didn't raise it earlier, about alleged political interference in this decision-making.

Now, I want to, in the time I have, yield to some of my colleagues. And I don't know how much I do have. May I inquire how much I do have, Mr. Chairman?

Mr. BURTON. Eight minutes.

Mr. WAXMAN. I have 8 minutes. I want to put something on the screen. This is an excerpt from your deposition, January 13, 1998.

Representative Horn: "Isn't it a fact that no matter what question we raise, we are wasting our time because you were given an order as to how to come out on this?"

And your answer:

That is not true. That is not true. That is simply not true. I came up with my recommendation on June 29th. Those were my views at the time based on my examination of the record. No one told me, "You are going to go and write this letter that way." That just didn't happen.

Now, I must say for a Member of Congress to badger a witness because he is not getting the answer he wants is very, very disturbing to me. Maybe we can just say, like a lot of people say when they do not get the answer they want, it is politics. But I do not think that is the way Members of Congress ought to be conducting an examination or an investigation where they are presumably trying to get to the truth.

I have time to yield. Mr. Lantos, I want to yield to you now and let you pursue questions for 5 minutes, although it may well be then appropriate to let other Members——

Mr. SUNUNU. Would you yield for a moment, Mr. Waxman?

Mr. WAXMAN. Who is asking me to yield?

Mr. SUNUNU. I am.

Mr. WAXMAN. Yes.

Mr. SUNUNU. Just because of the testimony you have put on the screen, I think it is timely, I would just take a moment to call your attention to another part of the exhibit record which is 324, a memo dated July 6, the fourth paragraph of which states clearly, the upshot of the meeting attended by Mr. Anderson——

Mr. WAXMAN. Whose affidavit is this?

Mr. SUNUNU. This is not an affidavit. It is part of the record, exhibit 324.

Mr. WAXMAN. Can you identify that exhibit, what it is?

Mr. SUNUNU. It is a memo describing a meeting on the issue of the Hudson Dog Track attended by Mr. Duffy, someone named Heather, I guess that is Sibbison, Bob Anderson and Troy. It says, "We discussed George's letter."

The fourth paragraph: The upshot of the meeting was that "Duffy wants the letter rewritten to include further reason for denying," et cetera. I would only present that as an indication that possibly there was a request to change the finding either on or after June 29th.

Mr. WAXMAN. I appreciate what the gentleman is raising, and let us put that to the witness because you are the one who was in charge of this whole decision. Was this possibility accurate? Was there an interference by Mr. Duffy or somebody in politics, as the gentleman from New Hampshire suggests might be possible?

Mr. SKIBINE. There was no interference with my June 29th recommendation. And there were changes made after my June 29th recommendation before the final decision was signed by Mr. Anderson.

Mr. WAXMAN. Did those changes go to the decision or did they go to how the decision would be articulated?

Mr. SKIBINE. It goes to the reason for the decisions. It doesn't change the ultimate result not to take the land into trust. It really goes to whether the Department should rely on section 20 of the Indian Gaming Regulatory Act as well as refusing to take the land into trust under DIRA.

Mr. WAXMAN. I thank my colleague for raising this point so we can have it clarified. I hope the Members of the other side will see that we are willing to yield to them if they have a pertinent point. I have found that so far my experience is that the Republican Members have never been willing to yield to me, so I hope we will see that change.

Mr. SKIBINE. Can I make a comment before I forget on something, Mr. Waxman, that you said before? I want to point out that I do not feel that I was badgered by the chairman or by the counsel, and I certainly hope that the rest of these proceedings will not change in that sense and that we are not going to go as long as we did in my deposition.

Mr. WAXMAN. Well, you are a diabetic. If you have special needs, you ought to let the chairman know because I am sure he will be considerate of it.

Let me ask you one other question, because you are under oath, and let's get this pinned down: Do you have any knowledge of any cover-up in the Department of Interior about political interference that might have been brought to bear in this decision that was made?

Mr. SKIBINE. No, I do not.

Mr. BURTON. If the gentleman requires a break after this series of questions, we will be happy to give him one.

Mr. SKIBINE. I am doing fine right now, thanks.

Mr. WAXMAN. I want to yield to Mr. Lantos if he wants to take time. Otherwise I will yield to other Members.

Mr. LANTOS. I would suggest, in deference to Mr. Skibine, that we take a break, and I would like to take my 5 minutes after.

Mr. WAXMAN. He doesn't want to break. Let me yield to other Members that may want to—Mr. Kanjorski? Mrs. Maloney? You will await your 5-minute time. Mr. Barrett?

Mr. BARRETT. Thank you, Mr. Chairman.

Mr. Skibine, how do you feel about being here?

Mr. SKIBINE. Well, as I stated in my opening statement, I think it is my duty as an American and as a civil servant to appear before this committee in its investigation of this matter, and I am here to give the record of my involvement and I hope it will be helpful.

Mr. BARRETT. You said you had trouble sleeping last night, you were tossing and turning because of your attempt to try to figure out how four or five people could file an affidavit saying something that you have testified today you didn't say. You haven't said whether you have sort of come up with a theory as to what they heard or what they thought they heard, because you seem to be very gracious to them in thinking that there may have been a mistake. Could you tell us maybe what your thoughts are?

Mr. SKIBINE. Well, as I started to explain with the majority counsel, what we were there for was to essentially give them technical advice on putting land into trust. But when we got there it became quite clear that they did not want to talk about that. They wanted to talk about Hudson, and we told them that we could not talk about Hudson because it was under litigation. And in fact we said that; we specifically had told the Lac Courte Oreilles Tribe that we were not going to discuss Hudson.

So we proceeded to discuss the issue of putting land into trust. We were talking in terms of the hypothetical placement of land in trust, and I think they were essentially talking about Hudson without saying so. And of course they wouldn't be, Mr. Havenick was there not for the purpose of hearing about the tribe putting land into trust elsewhere.

So what I think one of the issues we told them is that look, if you want to take land into trust off reservation, I think that it is very important that you obtain the support of the local community. And without having local political support, you will—you know, the application will be in trouble.

And Mr. Havenick didn't—was very distraught by that because he said, well, we have—we know what the town of Troy thinks, and they haven't changed their mind. We know what the city council of Hudson thinks and they haven't changed their mind, so essentially we are not going to go anywhere.

And my comment was, you know, that without local political support there is going to be a problem.

Mr. BARRETT. Do you think that that is an accurate assessment of this type of proceeding? Do you think you were giving them good advice?

Mr. SKIBINE. Was I giving them good advice? I hope so. I was doing the best I can.

Mr. BARRETT. I would share your feeling that I think that the political input is always going to be part of this. Have you or your Department—do you know of any opposition that you have received on other attempts to put land into trust by other Members of Congress other than those in this case?

Mr. SKIBINE. Can you repeat the question?

Mr. BARRETT. In this case we have had opposition I think perhaps from the entire Minnesota delegation, at least those who have gone on the record; from all of those in the Wisconsin delegation who have gone on record, have been in opposition to this. Is that unusual, or in other States do you see opposition or support, for that matter, from Members of Congress?

Mr. SKIBINE. We see both, yes.

Mr. WAXMAN. Because the time is up, I want to say one thing to add to the record.

Mr. BARRETT. Sure. Let me yield back to Mr. Waxman.

Mr. WAXMAN. Because if we had also had Hilda Manuel testify, she would have said the Washington office rejects the area office's recommendations quite frequently. There is no difference than the decisions under Secretary Lujan. That issue came up yesterday. People said this is extraordinary, that the local offices's decision was overturned. It is evidently not so remarkable.

Mr. Skibine, you are here as a career public employee. You have said to us you have made your decision on the merits without political interference. Is that your clear, unequivocal testimony?

Mr. SKIBINE. Yes, it is.

Mr. WAXMAN. Thank you. And thank you, Mr. Barrett.

Mr. BURTON. The gentleman's time has expired. Mr. Skibine, would you like to take a break right now? We are going to have questioning for some time, if you would like to have a break.

Mr. SKIBINE. A break right now is OK.

Mr. BURTON. OK, we will take 5 or 10 minutes.

We stand in recess until the fall of the gavel.

[Recess.]

Mr. BURTON. The committee will come to order. We will break at 12:15. Mr. Skibine, because of his health concerns, would like to have lunch at that time. So we will break at 12:15 and will be back promptly at 1. I would like to start at 1 because we have a lot left on the agenda.

I am going to take the first 5 minutes, if I might.

Mr. Skibine, I want to direct your attention to a couple of memos, exhibit 324 and exhibit 326–A–1. My colleague brought to your attention a memo concerning a July 5, 1995, meeting that was attended by John Duffy, Heather Sibbison, Bob Anderson and Troy Woodward, I believe. The upshot of the meeting was that Duffy wanted the letter rewritten to include a further reason for denying to take the land into trust under section 20, because the consultation process resulted in vehement and widespread local government and nearby Indian tribes opposition to locating the casino at this site. Mr. Duffy was the counsel to Mr. Babbitt; correct?

[Exhibit 324 follows:]

July 6, 1995

In a July 5, 1995 meeting attended by Duffy, Heather, Bob Anderson and Troy, the topic of the Hudson Dog Track was discussed. We discussed George's letter for Ada's signature informing the three Tribes that the Secretary was declining to take land into trust in accordance with his discretionary authority under 25 C.F.R. § 151.

The main issue discussed was why the letter indicated that the Secretary's denial was under Section 151 and not Section 20 of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701-21 (1988). Duffy advocated the position that this was the perfect opportunity to calm the fears of local communities that Indian gaming would not be foisted upon them without their consent. Duffy thinks that the local communities may veto off-reservation Indian gaming by objecting during the consultation process of Section 20. I expressed the opinion, advocated by George and which we have used to evaluate objections in the past, that the consultation process does not provide for an absolute veto by a mere objection, but requires that the objection be accompanied by evidence that the gaming establishment will actually have a detrimental impact (economic, social, developmental, etc.).

Bob agreed with Duffy in this case because a local Indian tribe, the St. Croix Chippewa, objected to the gaming establishment. [check to see that there is a local tribe] Therefore this decision could have the calming effect that Duffy wants without inflexibly locking the department into this policy because this case is easily distinguishable, i.e., there will not be many cases where a tribe wants to locate a casino near a neighboring tribe.

The upshot of the meeting was that Duffy wants the letter rewritten to include a further reason for denying to take the land into trust under Section 20 because the consultation process resulted in vehement and wide-spread local government and nearby Indian tribes' opposition to locating a casino at this site. TMW.

03216

Mr. SKIBINE. That is right.

Mr. BURTON. And Mr. Duffy left the Interior Department and went to work for the Shakopee Tribes as a representative for them in a law firm; correct?

Mr. SKIBINE. My understanding is that he went to work with a law firm in Washington, Steptoe & Johnson.

Mr. BURTON. That is right, but he represents the Shakopee Tribes, as does Mr. Collier who was the chief of staff. They both left after all this took place and went to work for this law firm and they now represent the Shakopees. Is that correct?

Mr. SKIBINE. I am sure about Mr. Collier. I think that Mr. Duffy represents the Shakopee Tribes on some matters.

Mr. BURTON. OK. Well at this meeting, Mr. Duffy, who went to work for the Shakopees, wanted the letter rewritten. And at that meeting was Duffy, Heather Sibbison, Bob Anderson and Troy Woodward. Did you ever talk to any of those people about the letter, about the rewriting of the letter?

Mr. SKIBINE. About the rewriting? No.

Mr. BURTON. You didn't talk to any of those people?

Mr. SKIBINE. No, let me tell you for the record, I drafted my recommendation on June 29, 1995. And that is in the record. I subsequently went on vacation and then I came back over the weekend. I came in the office. I did ministerial—incorporated some changes from my draft that were left, and I subsequently immediately left to go to Denver on another matter. And the only one I talked to during that time in Denver was Mike Anderson.

Mr. BURTON. OK. Now I would like to direct your attention to 326–A–1. This is a memo from you, George Skibine, dated 7/8. And I am not sure to whom it was sent but it says "to Mr. Meisner." It said, "You should get a redrafted version of the Hudson letter first thing Monday morning. I hope it meets Duffy's directions." What does that mean?

[Exhibit 326A–1 follows:]

GS 009

[illegible] From: KEVIN MEISNER [illegible] (1 bytes: 22 ln)
To: TROY WOODWARD
Subject: Re: Hudson Letter
---------- Forwarded with changes ----------
From: KEVIN MEISNER at -DOI/SOL_HQ 7/12/95 9:36AM (1199 bytes: 16 ln)
To: George Skibine at -IOSMAIL, V. Heather Sibbison at -ISOL
Subject: Re: Hudson Letter
---------- [illegible] Contents ----------

Text 1: Text_1

From George Skibine 7-8-95: You should get a redrafted version of the Hudson letter first thing Monday morning. I hope it meets Duffy's direction. If it does not materialize, please call Larry Scrivner [illegible] acting IGMS Director until my return.

From Kevin 7-11-95: This letter did not come up Monday morning, it was sent directly to Heather and changes were made. I did not get a copy until Tuesday morning after a discussion with Paula and Larry [redacted]

Document provided pursuant to Congressional subpoena

EXHIBIT
326A-1

Mr. SKIBINE. What it means I think is that when I did come back from vacation I found in my box, in my in box, a corrected draft with a bunch of requirements, whatever, changes.

Mr. BURTON. From who?

Mr. SKIBINE. Who put it in my box?

Mr. BURTON. You said there was requirements or changes. Who——

Mr. SKIBINE. I think that it was from an e-mail that is in the record. I think those were Heather Sibbison's and John Duffy's suggested changes.

Mr. BURTON. OK, John Duffy's suggestion. Mr. Duffy now works for the Shakopees and is making a lot of money at that law firm from the Shakopees. I believe he has helped facilitate campaign contributions to the DNC from the Shakopees which you may not be aware of, but you say in your memo, "You should get a redrafted version of the Hudson letter first thing Monday morning. I hope it meets Duffy's direction." Mr. Duffy was a political appointee who now works for the Shakopees. He gave you direction. You say, "I hope it meets Duffy's directions." So the letter—now, wait a minute, that is what your memo says.

I don't understand how this squares with no political influence was utilized, because Mr. Duffy went to work for the Shakopees, and was a major help to the DNC with contributions, Mr. Duffy gave you a direction and you said so in your memo, and you changed the letter because of what Mr. Duffy said.

Now, then there is a letter from Kevin. It says, "This letter did not come up Monday morning. It was sent directly to Heather and changes were made." The letter we are talking about is the letter that you changed. "This letter did not come up Monday morning. It was sent directly to Heather and changes were made."

Who is Heather, and did she help rewrite the letter that you have put your signature on?

Mr. SKIBINE. This is Heather Sibbison you are referring to?

Mr. BURTON. Yes.

Mr. SKIBINE. And what is the rest of the question? Did she help rewrite——

Mr. BURTON. It says, "This letter did not come up Monday morning. It was sent directly to Heather and changes were made."

Mr. SKIBINE. Right.

Mr. BURTON. They are referring, I presume, to the same letter that you were rewriting, because Mr. Duffy wanted you to rewrite it including things he wanted in there.

Mr. SKIBINE. That is—that e-mail is not from me. It is from someone else.

Mr. BURTON. I understand. But is that the same letter? I am talking about your——

Mr. SKIBINE. I don't know. You know, I can't speculate about that.

Mr. BURTON. My time has expired. But the point I am trying to make is that there was not supposedly any political interference. Mr. Duffy was a political appointee. Mr. Duffy went to work for the law firm. Mr. Duffy instructed you, because you said you hope it met with Duffy's directions. Mr. Duffy instructed you, directly or indirectly, to rewrite the letter. And you did it according to his di-

rections and you said, "I hope this meets with Mr. Duffy's requirements." If that doesn't smack of political influence, then I don't know what does.

Mr. Lantos, you have the time.

Mr. LANTOS. Let me clarify for the chairman his apparent confusion. The changes Mr. Duffy proposed related to legal reasons for the decision, not the substance of the decision. And your repeated emphasis of Mr. Duffy working for a law firm and having a lucrative position with a law firm conveniently forgets the chronology. Senator Dole is working for a law firm at a lucrative rate, and what his decisions were as a U.S. Senator preceded his work with the law firm.

I have grave reservations about the revolving door, but I think it is absurd to criticize an individual who is working for the U.S. Government for participating in the work of his Department while being on the Government payroll. Subsequently he went into the private sector. Many Members of this body and the Senate and many Presidential candidates do that. And I think it is an attempt to obfuscate the issue.

I would like to first, Mr. Skibine, identify myself with a statement of my good friend and distinguished colleague from Maryland, Mr. Cummings, when he indicated his respect both for you and for the Civil Service.

I also want to express my regret that your counsel was not given an opportunity to make his statement. You are a quarter-century civil servant.

I would like to use my time, because I think the facts have been clearly established that you reached your decision on the merits of the case without any political interference. I would like to focus my remarks on the Republican counsel's feeble attempt to confuse the notion of what represents political interference. He referred to the meeting of the Minnesota congressional delegation which you attended presumably 3 days after you took this job. Well, the meeting took place 3 days after you took this job, so that is why you attended it 3 days after you took that job.

Apparently counsel does not understand that much of the work of Members of the Congress of the United States consists of representing their constituents and their communities. And it is preposterous, in my view, to deliberately attempt to confuse the work of Representatives on behalf of their constituents, which is clearly what Mr. Gunderson and Mr. Oberstar and other colleagues, both Republicans and Democrats, did in this instance, with what is the alleged purpose of these hearings; namely, the attempt to find out if improper campaign contributions influenced political decisions.

And since you were pressed on the notion as to whether your meeting with the Minnesota congressional delegation does not contradict your sworn statement that you did not reach your conclusion as a result of political pressure, I think it is important to delineate these two entirely different types of activities.

Every single member of this committee and every single Member of Congress represents and attempts to put pressure on the appropriate department of the administration with respect to his constituents and his district problems. We do that when we go before the Committee on Appropriations looking for funds to rebuild a

washed-out highway in our district. This is represented by our attempt to obtain grants for our universities. This is not political pressure, this is the job of representative government.

And what presumably the other side seems unable to prove, therefore they are shifting the ground, is that your decision was made without any interference whatsoever by the Democratic National Committee, by the White House, by any political arm of the Democratic party. Is that correct, Mr. Skibine?

Mr. SKIBINE. That is correct, yes.

Mr. LANTOS. So the political pressures that you were subjected to were the proper political pressures, i.e., statements by the Republican Governor of the State, the Republican Congressman of the district, the Republican State assembly person of the district, and these are the proper expressions of representative government in our society. Would you agree with that?

Mr. SKIBINE. I agree with that.

Mr. LANTOS. Thank you very much.

Mr. HASTERT. Mr. Skibine, I appreciate your being here today. I would like to just clarify a couple things. I certainly hope that you don't feel that you have been badgered, either here or any previous time.

You know, we have to go to defining what badgering is. I am not sure that—I mean, everybody would have a different defining. I happened to sit in this Congress 8 years in the minority and enjoyed sitting under my friend right here, Mr. Waxman, and sat under Mr. English and sat under Mr. Synar and sat under Mr. Dingell, and I can tell you, I don't think they ever badgered anybody but they certainly went to some extraordinary energy to make their points. And that happens in this business. So however we want to define that.

But I would like to get back just to the sequence that we talked about today. First of all, the major test that the applications for off-reservation gambling sites must meet is that there is no detriment to the surrounding community; is that correct?

Mr. SKIBINE. That is partly correct, partially correct. When an application is submitted to an area office and eventually to our offices for gaming, the following determinations have to happen. First, the Secretary has to make a decision on whether he wants to exercise his discretionary authority to take the land into trust, because the Indian Gaming Act is not a land acquisition authority. Land acquisition authority must be a congressional statute that authorizes the Secretary to take that land in trust for the Indians. In this particular case, the statutory authority to take the land into trust was section 5 of the 1934 Indian Reservation Act.

Mr. HASTERT. So that would be one of the issues. I have only 5 minutes here.

Mr. SKIBINE. That is the first one. Then assuming that the Secretary determines that he does want to take the land into trust, to exercise that discretionary authority, he will then, if it is for gaming, have to comply with the requirements of the Indian Gaming Regulatory Act, in this case section 20, which requires if it is off reservation and none of the specific exceptions apply, it requires that gaming can only occur on the land if the Secretary determines, after consultation with nearby tribes and appropriate State and

local officials, that the gaming establishment will be in the best interest of the tribe and not detrimental to the surrounding community and only if the Governor concurs in that determination.

Mr. HASTERT. So there has to be a concrete showing of detriment to actually—that either there is increased crime or increased traffic that the infrastructure for that area won't support; is that correct?

Mr. SKIBINE. Well, there has to be some reasons——

Mr. HASTERT. Is that generally correct?

Mr. SKIBINE. There has to be some reasons for the Secretary to make that finding.

Mr. HASTERT. You know, I come from an area, northern Illinois; there is gambling. It is not Indian gambling, but there is gambling. My good friends from Indiana will tell you that Indiana, northern Indiana, opened up gambling, and, boy, it really took the business away from Illinois, and it went to Indiana. I guess Indiana is a better place to go, but basically the population that was served was the greater Chicago area.

Now, that was made in a free market decision. People get the licenses from the States, and they go in and they apply, and the process goes forward. It is not a Federal agency that decides who gets this favor, who gets that favor. But when you apply this thing between Wisconsin and Minnesota, there was already Indian gaming or gaming sponsored by Indians controlled by the Federal Government in Minnesota; is that correct?

Mr. SKIBINE. That is correct.

Mr. HASTERT. And when this thing in western Wisconsin, which is very close to Minnesota—it is a border of Minnesota—there was fear by one Indian tribe that their business would be taken away; is that correct?

Mr. SKIBINE. There were fears by many Indian tribes.

Mr. HASTERT. So in that fact then, there was a fear.

The Federal Government determines who gets these licenses and who doesn't; is that correct?

Mr. SKIBINE. No, there is no licensing involved.

Mr. HASTERT. Well, I mean who gets the trust to do this? You were a part of whether that site was going to become a site for gambling or not; is that right?

Mr. SKIBINE. That's right.

Mr. HASTERT. However you want to call it.

So the issue here is that there was extraordinary influence—we can call it political influence, you could call it economic influence—upon certain members of Government to decide whether this entity was going to take place as a gambling entity. In fact, the Ashland, WI, office of the Bureau of Indian Affairs said that there was no detriment and the Minneapolis Bureau of Indian Affairs office said that there was no detriment. And, in fact, this even went to Washington, and the area office recommendation was approved or said that there was no detriment, at least, it was moving forward.

But when the exhibit 317–A that says the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community—can we have that? That was basically saying that there was no detriment.

Then, all of a sudden, this comes to Washington and there are issues that happen, and one of the facts that we had testimony yesterday that there was a third of a million dollars as a contribution. Whether that is a political influence or not, I don't know, but it certainly lays that predicate that there could be.

I know that you are just a person who has to make his decisions, but when somebody gives you a memo and says you have to change your report, that certainly leaves suspicion. I know you are innocent of that. You made your best judgment. But when a superior or your attorney tells you to do something, certainly that gives us an opening to ask questions.

My time is up. I would yield back my time.

Mr. SKIBINE. Can I respond?

Mr. HASTERT. Certainly.

Mr. SKIBINE. Well, what I want to say is that I made my recommendation on June 29th. That recommendation is a draft. It is my recommendation, and it goes up the chain of command and ultimately finds its way to the Assistant Secretary, in that case the Deputy Assistant Secretary, for his signature.

Any of the people who are reviewing the draft can make changes to it. If they don't like what I am saying, they can make changes to it. It is—it is not my decision. It is my recommendation. That obviously happened in this case. In the normal course of doing business, that will happen.

Mr. HASTERT. So this attorney did ask to change and make——

Mr. SKIBINE. I am sorry, counsel was speaking and I didn't hear what you said.

Mr. HASTERT. This attorney did ask to make a change, and it was made in your recommendation?

Mr. WAXMAN. Will the gentleman yield?

You are not saying the decision was changed. You are saying the draft of the decision was changed but the decision was the same?

Mr. SKIBINE. What happened essentially is that the ultimate outcome, which is not to take the land into trust, that was not changed, but the bases for coming to that conclusion were changed.

Mr. HASTERT. Thank you.

I yield to whoever—Mr. Kanjorski—for 5 minutes.

Mr. KANJORSKI. I am going to give you one more opportunity, because I know you have been a public servant for 20 years. You came into the office just shortly before this application landed on your desk. You prepared, went through the process, made the recommendation, and the final decision of the Department followed your recommendation, your position or your analysis of the problem.

Now, do you want to satisfy the majority and tell them there was political influence so we can give them one last time to be happy, or are you satisfied that no political influence in any way was exercised to encourage you to arrive at a decision one way or another?

Mr. SKIBINE. There was no political pressure or improper influence borne on me, put on me, to come up with my June 29 recommendation.

Mr. KANJORSKI. OK. Now in all these instances Mr. Skibine, there are winners and losers; is that correct? If you issue a license

to one group, somebody else will have an impact on a negative group.

Mr. SKIBINE. That is correct. But one thing in the press there was all these reports that the BIA issues gaming licenses. That is simply not the case, and I hate to see professionally this perpetuated in this hearing. The BIA does not issue licenses. One of their responsibilities is to take land in trust, to clarify that.

Mr. KANJORSKI. In other words, the license couldn't be granted unless the property was taken into trust. Other than that, there couldn't be a license offered on that property.

Mr. SKIBINE. There could be no gaming on that property unless it was in trust.

Mr. KANJORSKI. In your analysis, did you review the contractual arrangement, the finances of the non-Indian group and the three tribes and who would derive what, or did that not come to bear?

Mr. SKIBINE. In our review of the section 20 determination, we have to review the best, whether the gaming establishment is in the best interest of the tribe, and to do that, we would go into an in-depth review of the financial arrangements for this deal to make sure that it is in the best interest of the tribes, yes.

Mr. KANJORSKI. Somewhere I read a document that indicated that the National Indian Gaming Commission was not satisfied with the terms and conditions of that agreement. Am I relatively correct in that interpretation?

Mr. SKIBINE. Yes, I think you are. Parallel to our examination of whether the deal is in the best interest of the tribe, if the gaming involved a management contractor, the Indian Gaming Regulatory Act, IGRA, requires management contracts to be submitted to the National Indian Gaming Commission, the NIGC, for their review and approval. So that is what the three tribes did, because they had a management contract in this case; they submitted the management contract to the NIGC for their review at the same time as the application was pending for the land transfer.

Mr. KANJORSKI. And in that review, the National Indian Gaming Commission was not satisfied with the terms and conditions of the agreement; is that correct?

Mr. SKIBINE. I recall that they did send the three tribes a letter informing them of—or the contractor; I don't know who received the letter actually—informing of deficiencies in the submission.

Mr. KANJORSKI. Off the purposes of this hearing—because, quite frankly, I am interested in it—are there a lot of these applications now going on across the country? Where people who have disappointed investments in dog tracks or other potential gaming properties are seeking out Indian tribes to justify putting their property in trust so that they can build casinos? Is that a wide experience that is occurring across the country?

Mr. SKIBINE. I think it is occurring. What happens in a lot of cases where, in cases of gaming, a lot of the Indian tribes do not have the capital to essentially finance these acquisitions, so that they are approached or approach, or however that happened, non-Indian companies, gaming concerns, financing corporations, dog track owners, to enter into a partnership that will essentially be beneficial to both.

In a case where there is a dog track, let us say in Kansas, they will——

Mr. KANJORSKI. I understand, if you are a poor Indian tribe and you are getting nothing, when a gaming group comes by and offers you something, there is a gain to you and a benefit. What I am interested in: Is the law sufficiently examined now that there isn't advantage being taken of some of these Indian groups, that we couldn't do something better to see that the proceeds from gaming go to the Indian tribes more so than the private speculating market?

Mr. SKIBINE. The law provides—and that is not my area, but the law provides that in the management contract the contractor cannot get more than 30 percent of net revenues. And the tribe then gets 70 percent. In extreme cases, I think it allows up to 40 percent of net revenues. So the IGRA, the Indian Gaming Regulatory Act, addresses this issue to make sure that the tribes are the major benefactors of the venture.

Mr. KANJORSKI. Do you think we should spend some time on this committee, oversight, looking into some of these contracts and some of these propositions across the country?

Mr. SKIBINE. I don't want to speculate on that.

Mr. KANJORSKI. Thank you.

I yield back the balance of my time.

Mr. BURTON. The gentleman yields back the balance of his time.

Mr. Cox.

Mr. COX. Thank you, Mr. Chairman.

Mr. Skibine, you are trained as a lawyer; is that right?

Mr. SKIBINE. I am, yes.

Mr. COX. And you spent over 20 years with the Department of Interior?

Mr. SKIBINE. That is correct.

Mr. COX. And you are head of the Gaming Office.

Mr. SKIBINE. I was the head of the Gaming Office.

Mr. COX. At all the times in question?

Mr. SKIBINE. Right.

Mr. COX. On your—in your May 17, 1995, meeting that we have discussed here, did you raise any concerns, that is to say, the meeting that took place——

Mr. SKIBINE. I don't think we discussed the May 17. We discussed the February 8, 1995, meeting with Congressman Oberstar and others.

Mr. COX. OK. Do you know the meeting to which I refer?

Mr. SKIBINE. No, not specifically. If you can be more——

Mr. COX. All right. There was a meeting that took place, and I believe the date is, in fact, May 17, 1995, at which you discussed the status of the application among the tribes, the members who were advancing the casino application in Hudson. Does that ring a bell?

Mr. SKIBINE. We have had several meetings with the tribes. If you can—if you can refer me to who was at the meeting, then perhaps I can be more specific.

Mr. COX. May 17, 1995, morning meeting; the Chippewa seeking casino approval; met with Interior officials including John Duffy,

interior counselor, and George Skibine, head of the Department's Gaming Office. Does that now ring a bell?

Mr. SKIBINE. Yes, it does; yes.

Mr. COX. All right. At that meeting, to the best of your recollection, did you raise any concerns with the application or give any indication to the Chippewa present that their application would be rejected?

Mr. SKIBINE. I don't have—you know, I don't really have any recollection of what transpired at the meeting, except for I think Chairman Newago was there, and I recollect that he made an impassioned plea on behalf of his tribe for taking the land into trust. I cannot recall in any particularity what Mr. Duffy may have said to them at that meeting.

Mr. COX. How about you?

Mr. SKIBINE. I don't recall that I said much at the meeting except that I was just there.

Mr. COX. If you didn't say much, we can infer you didn't tell them about any problems with their application at that meeting.

Mr. SKIBINE. At that particular meeting, I just don't recall.

Mr. COX. But you do recall you didn't say much.

Mr. SKIBINE. I don't think I said that much, because the meeting was principally with the counselor.

Mr. COX. And therefore, if you didn't say much, you probably didn't say much about any particular subject.

Mr. SKIBINE. But I don't remember that.

Mr. COX. OK. Did you talk to Heather Sibbison after that meeting?

Mr. SKIBINE. I don't recall whether I talked to Heather Sibbison.

Mr. COX. We now know that Heather Sibbison rather rapidly after that meeting reported back to Harold Ickes through his assistant at the White House, and you are now aware of that; is that right?

Mr. SKIBINE. I am aware of that, because it has been in a lot of the documents that were submitted. I think it was shown to me in my depositions.

Mr. COX. When did you first learn about that, that what went on in that meeting was communicated to Ickes in the White House?

Mr. SKIBINE. I don't know. I certainly didn't know anything about it by July—I didn't know anything about that by July 14th.

Mr. COX. Are you in the habit of discussing meetings such as that with Heather Sibbison?

Mr. SKIBINE. Meetings with the White House?

Mr. COX. No; meetings such as the one that you had on May 17.

Mr. SKIBINE. Sometimes, sometimes not.

Mr. COX. So you may have been the source of her information?

Mr. SKIBINE. Her information for what?

Mr. COX. That she communicated then to the White House?

Mr. SKIBINE. I don't know. I don't know that she communicated anything to the White House.

Mr. COX. You just told me you did.

Mr. SKIBINE. No, I didn't know at the time.

Mr. COX. You told me you now know.

Mr. SKIBINE. You are referring to this.

Mr. COX. Right now, you now are aware that she communicated the next day with the White House; right?

Mr. SKIBINE. If you can show me the e-mail or the document you are referring to——

Mr. COX. I would just as soon stand on your earlier testimony of about three sentences ago under oath.

Mr. SKIBINE. Yes, I think I heard, I have—I think that somehow in the record that was shown to me so that I would know about it now.

Mr. COX. Now, you wrote a memo——

Mr. SKIBINE. I would much prefer having the memo or whatever you are referring to before me.

Mr. COX. I am going to begin something now that I have to finish on the next round because, as you know, we have a limited amount of time here. But I want to bring to your attention exhibit 321 and alert you to the fact that I am going to be asking you further questions about exhibit 321. It is a memo that you wrote to Heather Sibbison. And in that memo, dated June 30, which is then after the May 17 meeting and after her communication to Ickes through his assistant, you tell her that under section 20 your tentative conclusion is that the gambling establishment at Hudson is not going to be detrimental to the surrounding community, so instead you are going to go on a different legal ground, section 465.

I want to ask you this question: As the head of the office, the Gaming office, which you then were, and with your 20 years at Interior, can you give me today any examples in which an application was rejected not under section 20 but under section 465?

Mr. SKIBINE. I cannot—I cannot really talk about matters that occurred before I became the Gaming Director. So I can't answer that question. There may be some; there may not be.

Mr. COX. Do you know of any?

Mr. SKIBINE. Specifically, I can't recall of any.

Mr. COX. In connection with preparing this, did you find any precedent?

Mr. SKIBINE. No. This decision was made on the merits of this application.

Mr. COX. My time has expired.

Mr. BURTON. The committee will stand in recess until 1. Please come back promptly at 1.

[Whereupon, at 12:15 p.m., the committee was recessed, to reconvene at 1 p.m., the same day.]

Mr. BURTON. The committee will come to order.

Mrs. MALONEY. I'm next.

Mrs. MALONEY. Mrs. Maloney is recognized for 5 minutes.

Mrs. MALONEY. Thank you, Mr. Chairman.

Mr. Skibine, as a 20-year civil servant, you had the occasion to serve under both Democratic and Republican administrations?

Mr. SKIBINE. That is correct.

Mrs. MALONEY. During Secretary Babbitt's tenure, what was the Interior Department's policy with respect to off-reservation gaming establishments? What was their policy? Did they look at community support? Was community support important?

Mr. SKIBINE. Yes.

Mrs. MALONEY. Was it more important than on-reservation applications?

Mr. SKIBINE. I think that the determinations are made on a case-by-case basis and we'd have to look at the requirements of the Indian—the land acquisition authority and the requirements of the Indian Gaming Regulatory Act for off-reservation acquisitions. Section 20 requires that the opposition, the detriment to the surrounding community, be considered.

Mrs. MALONEY. Have you looked at many applications since in your tenure in your position? About how many applications have you had the occasion to review?

Mr. SKIBINE. On section 20?

Mrs. MALONEY. Yes.

Mr. SKIBINE. Not many, maybe three or four. Those don't—there are applications to take land into trust for gaming. But if the acquisitions on the reservation are contiguous to the reservation, then the two-part determination doesn't get triggered. If there's another section that applies under section 20, it doesn't get triggered. It is only if nothing applies that section 20 applies.

Mrs. MALONEY. Have you ever seen in the applications you have reviewed opposition to the extreme that you saw in this particular case?

Mr. SKIBINE. No. In the applications that I have reviewed under the two-part determination, essentially the surrounding community was in support of the gaming establishment.

Mrs. MALONEY. Well, I must say that the amount of opposition is almost staggering. The mayor was recalled by the voters after he supported the casino. The city council people who favored the casino chose not to run again because of the feelings in the town against it were so high. Isn't it true that the city council voted against it by 4 to 2?

Mr. SKIBINE. That's correct, the city council of Hudson.

Mrs. MALONEY. And isn't it true that 71 percent of the people in the neighboring town of Troy voted against it?

Mr. SKIBINE. Thirty-one percent of the people?

Mrs. MALONEY. Seventy-one percent in a town vote in the city of Troy voted against it?

Mr. SKIBINE. On this establishment?

Mrs. MALONEY. Yes.

Mr. SKIBINE. I don't recall that.

Mrs. MALONEY. You don't recall that. And isn't it true that the representative, the Republican-elected Congressman, was opposed to it?

Mr. SKIBINE. Yes. Congressman Gunderson, whose district this is, was opposed to this acquisition.

Mrs. MALONEY. And the State Representative, the State Senator, the entire Minnesota delegation, those Members of Congress in Wisconsin who came out came out in opposition, the Governor came out in opposition. Quite frankly, Mr. Chairman, I would have been surprised if there was a decision in the opposite direction given the large amount of community opposition.

I'd like to ask you also about the National Scenic Riverway. Isn't it true that the Hudson Greyhound Race Track on which the casino was to be built was located one-half mile from the National Scenic

Riverway and the Department had received many complaints about the environmental impact on the riverway?

Mr. SKIBINE. That is correct.

Mrs. MALONEY. And isn't it true that the local business people, many who had no financial interest, were also opposed to the application?

Mr. SKIBINE. We have on the record there was substantial opposition from a number of businesses in the area, yes.

Mrs. MALONEY. And isn't it true that the St. Croix tribe, which had an on-reservation gaming establishment within 50 miles of Hudson, opposed the application?

Mr. SKIBINE. The St. Croix tribe did oppose the application, yes.

Mrs. MALONEY. Yet, the tribe that was applying, they lived either 85 miles away or 188 miles away. That's as far as D.C. to Pittsburgh. What I find troubling with this, Mr. Chairman, is yesterday we heard from the tribes and the developer from Florida that they had their lobbyists meet with Secretary Babbitt. Now, if Secretary Babbitt or Mr. Skibine had decided in favor of the tribes 85 miles away, we would be having a hearing on that terrible decision. And here most of us believe that localities should have input into what happens in their localities.

The decision that was sent up by Mr. Anderson, and I'd like to put it in the record, says, "to substitute our judgment" and I quote, "for that of local communities directly impacted by this proposed off-reservation gaming acquisition we did not intend to go against the local government."

I thought that's what the Republican party was about, that they didn't want bureaucrats like Mr. Skibine, career bureaucrats, making decisions that overruled localities. And I just feel that I guess what we should have really are hearings on banning soft money. There would be no appearance of impropriety if there had not been contributions, as there were on both sides, both the Indians 85 miles and 188 miles away and the other aside, we would not be having hearings, we would not be looking at this now. We should be having hearings on banning soft money and focusing on that.

Mr. BURTON. Mrs. Maloney, did you want that submitted for the record?

Mrs. MALONEY. Absolutely.

Mr. BURTON. Without objection.

[Note.—The document referred to is exhibit 328–1 and may be found on p. 231.]

Mrs. MALONEY. Absolutely. Quite frankly, Mr. Chairman——

Mr. BURTON. Your time has expired. Without objection.

Mrs. MALONEY. Mr. Chairman, if it had been my district——

Mr. BURTON. Ma'am, your time has expired.

Mr. COX. Regular order, Mr. Chairman.

Mrs. MALONEY. And every elected official he opposed, I would have gone to Congress to reverse.

Mr. BURTON. Can you hear me?

Mrs. MALONEY. Mr. Chairman, what I'm trying to say is, what is the fuss about? We are supporting a local community's position.

Mr. BURTON. Mrs. Maloney, your time has expired. Mrs. Maloney, if you want to submit that for the record, it will be accepted.

Mrs. MALONEY. I would like very much to submit it for the record.

Mr. BURTON. Mr. Sununu, you are recognized.

Mr. SUNUNU. Thank you, Mr. Chairman.

I want to re-emphasize that we are not here because of a decision that was made. We're here because the reasons that were provided for that decision, or weren't provided, as is the case, are very troubling; that there was no notification, no communication throughout this whole process.

With regard to the community concern, let me begin by focusing on exhibit 324, paragraph 2. It states in this description of a meeting that look place, "The opinion advocated by George," you, "and which we have used to evaluate objections in the past that the consultation process does not provide for an absolute veto by mere objection." In other words, mere opposition isn't enough. It "requires the objection be accompanied by evidence with the gaming establishment that would have detrimental impact."

Has that been the position typically of the gaming staff at Interior, that it requires to be shown detrimental impact, as well?

Mr. SKIBINE. I'm sorry? I was trying to read, sir. I'm sorry, what are you quoting from?

Mr. SUNUNU. Is mere political objection enough to find that this was detrimental impact or would be detrimental impact?

Mr. SKIBINE. Under section 20?

Mr. SUNUNU. Yes.

Mr. SKIBINE. I think that wasn't the case here. I think that it was——

Mr. SUNUNU. OK, that wasn't the case here.

Mr. SKIBINE. Yes.

Mr. SUNUNU. In exhibit 321, your own memo, you point out that, "Even if the Town of Hudson and the Town of Troy were to embrace this proposal, we may still not change our position because of political opposition on the Hill."

So even if this had been unanimous in the towns, unanimous support, you're saying that you still may have found against; is that correct?

[Attorney-client conference].

Mr. SKIBINE. What I wrote in this e-mail is that, for purposes of the IGRA and the unfettered discretion of the Secretary, I think that the opposition of the Minnesota tribes and the opposition of—and for the reasons stated by the Minnesota delegation, may still be a factor in deciding not to take the land into trust. That's with respect to my recommendation on June 29th.

Mr. SUNUNU. But would it support a finding of no detriment to the community in and of itself?

Mr. SKIBINE. No. Under section 20, that was not the idea about section 20.

Mr. SUNUNU. In fact, there was no notification—let me back up. There was constant feeling within the career staff that there was no detriment to the surrounding community. Exhibit 303A–9. This is written by career staff. This was drafted on April 20, 1995, bold type, middle of the page finding by your staff, "Not Detrimental To The Surrounding Community." Are you familiar with this document that came from the local area staff?

Mr. SKIBINE. Are you referring to the June 8, 1995, memo from Tom Hartman?

Mr. SUNUNU. No. I'm referring to exhibit 303A. It is written by Office of the Area Director, April 20, 1995.

Mr. SKIBINE. I'm sorry, my counsel gave me the wrong document.

Mr. SUNUNU. Mr. Chairman, I hope that the delay in consultation with the counsel wouldn't be taken from my time.

Mr. ELLIOTT. Mr. Sununu, what's the number of that one?

Mr. SUNUNU. Exhibit 303A–1 through—it is a multiple page document, specifically page 9, bold type from the local office, "Not Detrimental To The Surrounding Community."

I just want to verify that you're familiar with the document, that it did indeed come from the local Office of Bureau of Indian Affairs, April 20, 1995.

Mr. ELLIOTT. Mr. Sununu, we have 303A, which goes through a dash 7. We've got a dash 8, which is the Hartman memorandum, not from the area director.

Mr. BURTON. What's the number that they are missing?

Mr. SUNUNU. You're correct on the date. That is June 8th, it's 303A–8, "Not Detrimental To The Surrounding Community." You're familiar with that memo?

[Exhibit 303A 1–24 follows:]

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, Minnesota 55401-2241

IN REPLY REFER TO

Tribal Operations

April 20, 1995

Memorandum

To: Assistant Secretary - Indian Affairs

From: Office of the Area Director

Subject: Trust Acquisition Request - St. Croix Meadows Dogtrack Property

Attached is a request by the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the Tribes) to place 55.82 acres of land into trust status for the benefit of all three tribes. The property consists of the St. Croix Meadows Greyhound Racing Facility and is located in Hudson, Wisconsin. In addition to the land, the Tribes have also entered into an agreement to purchase the assets of the track from the current owners. Once the requirements of the Indian Gaming Regulatory Act of 1988 are satisfied, the agreements to purchase the assets of the dogtrack are executed, and the land is placed into trust, the Tribes will add casino type gaming to the facility.

The Tribes are currently awaiting satisfaction of the requirements of the Indian Gaming Regulatory Act of 1988 before executing the land and asset purchase agreements. We transmitted our Section 20 Recommended Findings of Fact and Conclusions for this project to you on November 15, 1994. Since that time, the Tribes have specifically requested that the Bureau of Indian Affairs begin the process of placing the land into trust status. As a result, we obtained the attached Preliminary Title Opinion from the Office of the Field Solicitor, Twin Cities. We have also attached the following material in support of the trust acquisition:

1) Title Insurance Commitment;

2) Level I Hazardous Waste Survey;

3) Finding of No Significant Impact;

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4) Maps of the property;

5) Tribal Resolutions requesting the land be placed into trust;

6) Notification letters addressed to the local units of state government.

Please note, the responses of the local units of state government and additional material were included in our November 15, 1994 transmittal.

We have completed our review and analysis of the request and the supporting documentation. The findings and recommendations to place the land into trust after satisfaction of all IGRA requirements are set forth in this memorandum for your approval or disapproval.

I. PROPERTY TO BE ACQUIRED

The property to be acquired is located at 2200 Carmichael Road in Hudson, Wisconsin, approximately one mile south of the Carmichael Road/Interstate "94" interchange. The site consists of approximately 55.82 acres located in the fractional Northeast Quarter of the Northeast Quarter and Southeast Quarter of the Northeast Quarter, Section 6, Township 28 North, Range 19 West, City of Hudson, Saint Croix County, Wisconsin, described as follows:

> The fractional Northeast Quarter of the Northeast Quarter of said Section 6, EXCEPT that part of the right-of-way of Carmichael Road which is located in said fractional Northeast Quarter of the Northeast Quarter of said Section 6.
>
> Also, that part of the Southeast Quarter of the Northeast Quarter of said Section 6 described as follows: Commencing at the Northeast corner of said Section 6; thence S02°49'01"W, 1,891.74 feet along the East line of the fractional Northeast Quarter of said Section 6 to the Northeast corner of a parcel known as the "Quarry Parcel" and the point of beginning of this description; thence N88°40'24"W, 1,327.55 feet along the North line and the extension of the North line of said "Quarry Parcel" to a point on the West line of the Southeast Quarter of the Northeast Quarter of said Section 6; thence N02°48'30"E along the West line of said Southeast Quarter of the Northeast Quarter to the Northwest corner thereof; thence Easterly along the North line of said Southeast Quarter of the Northeast Quarter to the Northeast corner thereof; thence S02°49'01"W, along the East line of said Southeast Quarter of the Northeast Quarter to the point of beginning.

In June, 1991, the St. Croix Meadows Greyhound Racing Park opened on the site. The facility consists of a racing area, enclosed grandstand and clubhouse, kennels,

and parking areas. The racetrack is open year round and has twenty kennels, each kennel having the capacity of housing up to 72 greyhounds each. The racetrack currently employs approximately 282 employees, including the food service employees. Prior to the construction of the racetrack, the site was used for agricultural purposes.

II. COMPLIANCE WITH LAND ACQUISITION REGULATIONS

25 C.F.R. § 151.10 identifies various factors which must be considered in all fee-to-trust acquisitions. Each factor for the placement of the St. Croix Meadows Property in trust for the three Tribes is discussed below:

A. 25 C.F.R. § 151.10(a) - The existence of statutory authority for the acquisition and any limitations contained in such authority:

The Sokaogon Chippewa, Lac Courte Oreilles Chippewa and the Red Cliff Chippewa are all organized under the Indian Reorganization Act of 1934. Each tribe has requested to place the land in Hudson, Wisconsin, in trust for the benefit of all three Tribes under 25 U.S.C. § 465. The Bureau of Indian Affairs is authorized to process this application under 25 C.F.R. 151.3(a)(3) which states that land not held in trust may be acquired for a tribe in trust status when such acquisition is authorized by an act of Congress, and when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

B. 25 C.F.R. § 151.10(b) - The need of the individual Indian or the tribe for additional land:

The trust acreage at the three tribal reservations totals 57,868.76 acres.[1] However, each of the Tribes lack an adequate land base to provide facilities for economic development. This is due to the fact that each of the three reservations is located in areas of Wisconsin which are remote from significant population centers.

The Tribes operate a total of five (5) gaming facilities within the exterior boundaries of the three reservations. To ensure the continuing stream of revenue necessary for tribal economic development, self-sufficiency and a strong tribal government, the Tribes must expand its gaming operations beyond the existing facilities. The

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[1] The trust acreage is broken down as follows:
Sokaogon Chippewa Community - 1,694.10 Acres
Red Cliff Tribe - 7,881.12 Acres
Lac Courte Oreilles Tribe - 48, 293.54 Acres

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purchase and placement into trust of St. Croix Meadows Greyhound Park is viewed by the Tribes as critical to their long-term economic benefit. The project would permit the tribal governments, as well as tribal members, to participate in the operation of a gaming facility in a large metropolitan market.

Only the Sokaogon Tribe distributes gaming revenue to tribal members in the form of per capita payments. As a result, the majority of net revenue generated by the proposed casino would be used to expand tribal social programs, tribal government operations and economic development activities well beyond the limits allowed by existing federal and state assistance.

C. **25 C.F.R. § 151.10(c) - The purpose for which the land will be used:**

The Tribes intend to use the property for a Class III gaming facility. The Tribes have entered into an agreement with the current owners of the St. Croix Meadows Greyhound Park in Hudson, Wisconsin, to purchase the assets of the dogtrack. This track is located on the proposed 55.82 acres of trust land. Once the requirements of the Indian Gaming Regulatory Act of 1988 have been satisfied, and the land is placed into trust for the Tribes, casino type gaming will be added to the existing facility. No other use of the land is foreseen.

D. **25 C.F.R. § 151.10(e) - If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls:**

Notices of the proposed fee-to-trust conversion were sent to the Mayor of the City of Hudson, the Chairman of the City of Hudson, the Chairman of the St. Croix County Board of Supervisors, and the Chairman of the Town of Troy. The concerns not related to the removal of the property from the tax rolls that were raised by these local units of state government were fully addressed as part of the process under Section 20(b)(1)(A) of the Indian Gaming Regulatory Act of 1988 in the Recommended Findings of Fact and Conclusions prepared by the Minneapolis Area Director and sent to the Assistant Secretary-Indian Affairs on November 15, 1994.

Over 90 percent of the spending at the proposed Hudson gaming facility is expected to originate from outside the State of Wisconsin. The Hudson gaming facility is also expected to support 2,691 jobs and generate over $56 million in annual earning for residents of Wisconsin. Additionally, the Tribes, City of Hudson, and the County of St. Croix have entered into an *Agreement for Government Services*. Under this agreement the City and County will provide general government services to the proposed gaming facility. The services to be provided include, without limitation, police, fire, ambulance, rescue and emergency medical protection, road maintenance, education and access to water, sanitary sewer and storm sewer facilities, and other

services that are under the control of the city or county or are customarily provided to other commercial properties within the city or county.

Under the *Agreement for Government Services*, the Tribes will pay the city and county $1,150,000 annually through 1998 to compensate for the services provided. Beginning in 1999, and for each year thereafter, the Tribes will increase the last annual payment by five (5) percent. Thus, the local units of state government should not be detrimentally impacted due to the removal of the land from its tax rolls.

E. 25 C.F.R. § 151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise:

1. Potential land use conflicts: According to the City of Hudson, the proposed trust site is zoned general commercial district for the principal structure and ancillary track, kennel and parking facilities. Six acres of the proposed trust site are currently zoned single family residence. The east, south and westerly perimeters are classified as on-family residential districts and serve as a buffer area between the track operation and other surrounding land uses.

The City of Hudson has also stated that there is sufficient land in the city that is zoned appropriately or has already been identified for future commercial land use to accommodate the potential need for the development of hotels, motels, restaurants and other service type oriented businesses. We conclude that there are no land use conflicts that would result from the acquisition of this land into trust status and its development as a gaming facility. In fact, the current plans do not require construction of any buildings for the addition of casino type gaming to the dogtrack facility. The remodeling of the existing building which already contains pari-mutuel dog racing is the only construction that will be necessary. As a result, no zoning conflicts are foreseen.

2. Jurisdictional issues: As trust land, the property would be considered "Indian Country" for jurisdictional purposes within the meaning of 18 U.S.C. § 1151. As a result, the United States would gain additional law enforcement jurisdiction in connection with the property. However, the local units of state government would have the primary law enforcement roll since the State of Wisconsin is a mandatory Public Law 280 State. The Tribes have agreed to pay for these services even though it is not required. Accordingly, jurisdictional conflicts should not present a significant obstacle to the proposed trust land acquisition.

F. 25 C.F.R. § 151.10(g) - If the land to be acquired is in fee status, whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status:

The addition of this parcel of land to the jurisdiction of the Great Lakes Agency and Minneapolis Area Office will not result in a significant increase in workload because the Tribes will be managing the property as its own enterprise. Both the Agency and Area Office are currently sufficiently staffed so that any additional workload may be handled without the need for extra manpower or equipment.

III. NATIONAL ENVIRONMENTAL POLICY ACT

The transaction package has met compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C § 4321 *et seq*. The documentation in support of the acquisition includes a Finding of No Significant Impact (FONSI) signed by the Superintendent, Great Lakes Agency, on September 14, 1994. The FONSI is based upon an Environmental Assessment (EA) prepared by Mid-States Association, Inc. in 1988 for the St. Croix Meadows Greyhound Racing Facility and an Environmental Assessment Addendum to the EA prepared by Bischof & Vasseur in 1994. The addendum evaluates the potential impacts resulting from the proposed transfer of the site to be held in trust by the United States on behalf of the three Tribes and the remodeling of the existing Kennel Club Area to accommodate the addition of casino type gaming. The EA and addendum were reviewed by the Environmental Services Staff of the Minneapolis Area Office which found it to be adequate in scope and that its content supports the conclusions drawn.

A Notice of Availability for the addendum, Environmental Assessment and draft FONSI was published once in the ***Hudson Star - Observer***, a weekly newspaper printed in Hudson, Wisconsin, on June 23, 1994.

IV. HAZARDOUS SUBSTANCES DETERMINATION

The hazardous survey form, *Level I Survey: Contaminant Survey Checklist of Proposed Real Estate Acquisitions*, was completed and certified by the Area Office Hazardous Waste Coordinator on November 18, 1994. The completion of the form indicates compliance with the required survey for hazardous substance on property to be acquired in trust and concludes that no contaminants are present on the property. The survey was also approved by the Minneapolis Area Director on November 18, 1994.

V. OTHER CONSULTATION/REQUIREMENTS

In addition to compliance with NEPA, the documentation provided as a result of the proposed construction of the dog track facility in 1988, supports a finding of compliance with other related requirements as indicated by the following correspondence:

archeological sites: The Mississippi Valley Archaeology Center, Inc. stated that after archival review of available information at the University of Wisconsin - La Crosse and the State Historical Society of Wisconsin, there are no known archaeological sites in the proposed project area.

historic preservation: The State Historical Society of Wisconsin stated that there are no buildings in the study area that are listed in the National Register of Historic places.

endangered species: The Fish and Wildlife Service, Green Bay Field Office, Green Bay Wisconsin, provided a response dated January 9, 1989, concluding that no threatened or endangered species would be affected by the construction of the dog track facility.

other: The Addendum to the EA states that there are no anticipated impacts from the planned action on wetlands or surface water in the area. According to the National Wetlands Inventory map for the site, there are no designated wetland areas located on the site.

By letter dated January 3, 1989, the State of Wisconsin Department of Agriculture, Trade & Consumer Protection stated that there was no need for an agriculture Impact Statement as a result of the initial construction of the dogtrack. Additionally, since the planned action will utilize the existing racetrack facilities, it will not have a significant impact on prime or unique farmlands as described in the Farmland Protection Policy Act.

VI. RECOMMENDATION

It is our recommendation that after the requirements of the Indian Gaming Regulatory Act have been met, authorization should be provided to place the land into trust status for the benefit of the Tribes.

Area Director

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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:
Indian Gaming-Management
MS-2070

June 8, 1995

To: Director, Indian Gaming Management Staff

From: Indian Gaming Management Staff

Subject: Application of the Sokaogon Community, the Lac Courte Oreilles BAnd, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)[1]

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables.

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[1] References are to the application documents submitted by the Minneapolis Area Office.

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Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period for Indian tribes in Minnesota and Wisconsin was extended to April 30, 1995 by John Duffy, Counselor to Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act. 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
Chairman, St. Croix County Board of Supervisors, Hudson, WI (Vol. III, Tab 2*)
Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

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The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)

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2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**
6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
11) Chairman, Bois Forte (Nett Lake) Reservation Business Committee (Vol. III, Tab 16***)
12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)
15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab
***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in the statement: "...it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 stating that the resolution "does not retract, abrogate or supersede the April 18, 1994 Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the

County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, "Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment ($150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

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The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1¼% of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all businesses, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its Global Gaming Almanac 1995, is expected to increase to $1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin
In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes
On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of $450 million in 1993, and $495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be $114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were $80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market of $480 million, a Non-Minneapolis Gaming Market of $220 million, and a Wisconsin Market of $500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western

Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over $600 million.

The projected Hudson market share of $80 to $115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by $50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5% ($25 million) Therefore, only $5 to $40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of $1 to $8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a $96.8 million net profit in 1993. A reduction of $8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At $96.8 million, the per enrolled member profit at Mystic Lake is $396,700. Reduced by $8 million, the amount would be $363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. I, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are not equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting a several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from $25 million in 1995 to $12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to re-order its spending plans.

Market Saturation.
The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of $500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts

1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers
The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime
Hudson Police Dept. Crime & Arrests, (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the *St. Paul Pioneer Press* with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell

3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm tc Area Businesses

A. Wage Level
The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns
One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

IV. Property Values
An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bieraugel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkead, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase
Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500; and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities
St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning
According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water
The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage
The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

V. Roads
The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94.

The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis

The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, " . . . it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects $42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of $18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay $1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 -- a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any fax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians

are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto* giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

Hudson Dog Track Application

Table of Contents

DRAFT

EXHIBIT
303A-24

03210

Mr. SKIBINE. Yes, I am.

Mr. SUNUNU. Thank you.

Now, it was typical in this process that the office would communicate with the local tribes that, if there were problems with the application, you would notify them, give them an opportunity to cure defects, correct?

Mr. SKIBINE. There were meetings and there were telephone calls, as I testified before, with the three applicant tribes, yes.

Mr. SUNUNU. Not communications, but communications specifically to identify defects and give them an opportunity to cure defects. Are you suggesting that there was communication from your office about specific problems with their application?

Mr. SKIBINE. In writing, I don't think there were.

Mr. SUNUNU. There was not? Thank you. Is that unusual? Well, that is not unusual. Let me back up.

March 27th, was there not a memo to Chairman Ackley, exhibit 302 stating, last sentence, "Should areas of concerns with the application be identified, you will be so notified"? Are you familiar with that memorandum?

Mr. SKIBINE. Counsel is looking for it.

Mr. SUNUNU. That's exhibit 302. I simply want to bring it to your attention that not only was that normal policy, there was in writing a commitment to provide them with notification of defects and problems with the application.

Mr. SKIBINE. This is a letter to Arlyn Ackley from John Duffy. What we meant by this is that if we found some problems with the best interest part of the section 20 determination, we would bring it to their attention.

Mr. SUNUNU. Well, I don't think it is fair to embellish to any great extent here. I think what you meant is should areas of concern with the application be identified that they will be so notified.

I don't have much time, so let me just conclude here by emphasizing that throughout this process of communication that there would be no detriment to the community within the internal staff, there was no notification of specific defects in their application. And I think on that basis, there was a great reluctance to focus on section 20 and the detriment to the community operative part of the decision in rendering the final decision.

Would you disagree with that?

Mr. SKIBINE. Let me just say that it is true that my June 29th recommendation relied solely on a refusal to exercise discretionary authority and that I was familiar with Mr. Hartman's June 8th memo and that I think he raised some concerns with relying on section 20 and, that that was one of the reasons that I chose to confine my decision to a reliance on the Indian Reorganization Act's authority.

Mr. SUNUNU. Well, let me bring to the committee's attention exhibit 316, and maybe you can elaborate in looking at that. It is your e-mail of June 6th, the last sentence of which you state, "Are

you aware of any cases addressing the Secretary's authority to refuse to take land into trust? The acquisition is for gaming purposes, but we want to avoid making a determination under Section 20 of IGRA."

Why did you want to avoid invoking section 20?

[Exhibit 316 follows:]

[24] From: George Skibine at -IOSIAE 6/6/95 2:34PM (952 bytes: 1 ln)
To: DAVE ETHERIDGE at -DOI/SOL_HQ, KEVIN MEISNER at -DOI/SOL_HQ, TROY WOODWARD at -DOI/SOL_HQ
Receipt Requested
Subject: discretinary authority to take land into trust
---------- Message Contents ----------

Text item 1: Text_1

As you know, I am drafting a document relating to the acquisition of the Hudson dog track by three Indian tribes in Wisconsin. The letter will decline to take the land into trust pursuant to the IRA and Part 151 relying on the discretionary authority of the Secretary not to take such land into trust. Are you aware of any cases addressing the Secretary's authority to refuse to take land into trust. The acquuisition is for gaming purposes, but we want to avoid making a determination under section 20 of IGRA. .

Mr. SKIBINE. I wanted to avoid invoking section 20 because of, as I just stated, the concerns that Mr. Hartman brought to my attention. And in addition, I thought that the standard under section 20 for detriment is higher and I was concerned about setting a precedent.

Mr. SUNUNU. But despite your concerns, despite the concerns of the staff, despite the constant communication that there was no detriment to the community, in the final rejection letter you did cite section 20.

Mr. SKIBINE. The final rejection letter did cite section 20, yes.

Mr. SUNUNU. Exhibit 328, page 2: "Thus, we believe the proposed acquisition would be detrimental within the meaning of Section 20."

Why, after all the better judgment of you and your staff over a 4-week period, did you change your mind and suddenly decide to invoke section 20?

Mr. SKIBINE. As I've testified before, I was not involved in the conversations that took place between staff after June 29th on this issue. I think that clearly there were some in the Department that felt that the record justified a decision under section 20——

Mr. SUNUNU. And who would they be?

Mr. SKIBINE. There would be the——

[Attorney-client conference.]

Mr. SKIBINE. Well, I can only speculate.

Mr. SUNUNU. You stated clearly that there were others that thought it was the right decision. Who would they be?

Mr. SKIBINE. They would be the ones that were up from the chain of command. But I was not in those discussions, so essentially under oath here I'm not going to tell you who they are because I don't know. I wasn't there.

Mr. BURTON. The gentleman's time has expired. We'll give the gentleman some more time later.

Mr. Barrett.

Mr. BARRETT. Mr. Skibine, I'd like to continue along that very same line of questioning. As you stated, you were pushing for a review under 465; is that correct?

Mr. SKIBINE. That's correct, yes.

Mr. BARRETT. What was the standard of review at that time for a 465 decision?

Mr. SKIBINE. At that time it was my understanding that the Secretary, had the unfettered discretion not to take land into trust, that the factors that are listed in 151 were essentially factors and that the Secretary could rely on any additional information for his decision; that there was essentially unfettered discretion.

Mr. BARRETT. So that, if one were to challenge a 465 decision, it would be difficult to do?

Mr. SKIBINE. I think if—let me just say that if one were to challenge in 1995 a decision to take land into trust under 465, it would have been impossible to do because at the time the U.S.'s position, which was—the court's position was that the act did not provide for a waiver of the U.S. sovereign immunity to challenge these decisions, these determinations.

Mr. BARRETT. So those arguing, which included Michael Anderson, who will be here later this afternoon, the Solicitor General's

Office, and Mr. Duffy, I understand those were among those arguing for a concurrent section 20 decision as well. That was really the crack in the door that allowed legal challenge to this case, wasn't it?

Mr. SKIBINE. I don't really want to speculate on that.

Mr. BARRETT. Well, there certainly is a challenge available, is there not, under section 20?

Mr. SKIBINE. That's right there is, yes.

Mr. BARRETT. So clearly, if there was no challenge under 465 and there was a challenge under section 20, the Department was opening itself up for a lawsuit by including section 20?

Mr. SKIBINE. One can argue that.

Mr. BARRETT. I wanted to make sure. Because I think my point is it seems that, by including section 20, if one wanted to have a denial of the aggrieved party's ability to bring an action that you would have stayed under section 465, as you were advocating.

I'd also like to talk a little bit about Heather Sibbison because her name has been brought in here. And frankly, if I were handing out roses for actions that were definitely consistent with the public interest, I would give her one. And I've never met this woman. But I'm looking at her memo, and this is among the e-mails going back and forth on June 30th. And you've been asked a lot of questions about your 7:04 p.m., response. But let's go to the initial e-mail that she started with, which was at 10:50 a.m.

And she stated, "We may not want to include in our rationale the opposition of the other tribes. Because I think it is possible that if the three tribes," here I think she is referring to the three Wisconsin tribes, "came back with stellar support from their local towns and Congressmen, we might look at this proposition in a new light. But even in that case, the Minnesota tribes will still be against it." And also, "I agree with Collier's uneasiness about some tribes getting all the goodies at the expense of the other tribes. Theoretically, they should all have equal opportunities."

So she seems to me more than anyone to be the local support person in this. Is that accurate?

Mr. SKIBINE. That's accurate. But you know, I think that Ms. Sibbison is sitting behind here and if you want to ask her about her e-mails. I certainly don't feel comfortable talking about what she might or might not think.

Mr. BARRETT. But would you agree with me that she is certainly implying, if not stating directly, that this group, if they came back with the support from Hudson and St. Croix County and the township of Troy, that the Department might look at that in a different way? You seem to disagree with it a little bit. That seems to be her position.

Mr. SKIBINE. That's her position in this e-mail.

Mr. BARRETT. Under the statutes now, could this group come back in today with another application for the same site?

Mr. SKIBINE. Of course, yes.

Mr. BARRETT. If they did so, with the support of the community, do you think that your office may look at it differently?

Mr. SKIBINE. Of course, yes.

Mr. BARRETT. Has there been any indication to you that the local support has changed on this issue at all?

Mr. SKIBINE. I don't know that.

Mr. BARRETT. I mean, do you know that it has?

Mr. SKIBINE. No, I do not know that it has.

Mr. BARRETT. I guess my point is that we're spending a lot of time here today. There's a lot of money being spent on legal challenges, but if this decision was wrong, is there a mechanism for a motion to reconsider in your office? Maybe there isn't. I don't know.

Mr. SKIBINE. Yes, there is. In fact, the three tribes did file a motion for reconsideration after the decision was handed down. And we never got to respond to that because they also filed the lawsuit in *Sokaogon Indian Tribe* v. *Babbitt* and our attorneys advised us not at that point to respond to that.

Mr. BARRETT. In their motion to reconsider, did they include any signed of local support?

Mr. SKIBINE. I don't recall.

Mr. BARRETT. And were there any Members of Congress coming out in favor of this?

Mr. SKIBINE. Well, I think there was a lot of opposition from Members of Congress.

Mr. BARRETT. I was one of those.

Mr. SKIBINE. It is possible, however, that in the record there may be a letter from the local Congressman from where the three tribes are located.

Mr. BARRETT. That would have been Congressman Obey who came out against it.

Mr. SKIBINE. Yeah, Congressman Obey was against it, I mean representatives in the districts where the three tribes are located.

Mr. BARRETT. I think that would be Congressman Obey's direct. From northern Wisconsin at that time it was Congressman Gunderson, the western edge of the State, Congressman Obey, Congressman Roth. That covers the northern half of the State where these tribes are located. All three of those Congressmen came out against it. So you don't know of any support from any Members of Congress?

Mr. SKIBINE. No, I don't.

Mr. BARRETT. Thank you very much. I have nothing further.

Mr. BURTON. Gentleman's time has expired. Gentleman from Indiana.

Mr. SOUDER. Of course, the State legislator from Wisconsin who represents the tribes is on record, and we have in the record. And given the money that was flowing around in the case of Minnesota and other places, that's not necessarily a badge of honor. It's not necessarily a badge of dishonor.

Mr. BARRETT. Point of personal privilege, Mr. Chairman. You have the implication that Members who came out against this were doing it for money. I have not received any money from any Indian tribes, and I'm offended by the gentleman's insinuation.

Mr. COX. Mr. Chairman, regular order.

Mr. BURTON. Regular order has been called for. The gentleman will proceed.

Mr. BARRETT. Mr. Souder, I do not impugn your integrity, and I would appreciate it if you do not impugn mine.

Mr. SOUDER. Mr. Barrett, I was going to say on the record that you clearly explained a logical reason for your position the other

day. We do not have that information from all the others. And Mr. Burton, the chairman of our committee, has been impugned by your side.

Mr. BARRETT. And they are not here to defend themselves. Mr. Gunderson is not here to defend himself.

Mr. BURTON. The gentleman from Indiana has the time. If the gentlemen wants to discuss this and argue about it, you can take it off the floor.

Mr. SOUDER. I have been very disturbed by the information we've heard today. But I want to yield to Mr. Cox to proceed with his line of questioning.

Mr. COX. I thank the gentleman.

Mr. Skibine, I'd like to return to the document that you and I were discussing before the break. It is exhibit 321.

The date of that memo that you wrote is June 30 and it says, "Our tentative conclusion is that the record permits us to make a finding that a gaming establishment at that location will not be detrimental to the surrounding community."

So, at June 30, your tentative conclusion was that the record permits a finding that a gaming establishment, the dog track at Hudson, the casino, would not be detrimental to the surrounding community.

As a result, you state in the same memo, you're going to be using a different legal ground to deny the application. And that is section 465, not section 20. Section 465, because it, as you've just testified, gives the Secretary of the Interior unfettered discretion, it doesn't really require much explanation and it specifically does not require that you find one way or the other on the issue of any detriment to the community.

Are you aware, as we sit here today, that that sort of state of play of things was communicated to the White House?

Mr. SKIBINE. No.

Mr. COX. Even as we sit here today, you have no way of knowing, you have not heard it said that there was a report back, for example, by Heather Sibbison to the White House?

Mr. SKIBINE. No.

Mr. COX. Are you aware of any contacts between Heather Sibbison and the White House involving this matter?

Mr. SKIBINE. I was not aware of any such contacts.

Mr. COX. Are you now?

Mr. SKIBINE. Well, I think that there were some e-mails, or whatever they were.

Mr. COX. And those would be contacts, right?

Mr. SKIBINE. But unless you can show me the document.

Mr. COX. No. No. I'm asking you whether you're aware that Heather Sibbison was contacting the White House on this matter, specifically an assistant to Harold Ickes?

Mr. SKIBINE. I was not aware of it at the time.

Mr. COX. Are you aware now?

Mr. SKIBINE. Not necessarily unless I see the documents.

Mr. COX. Are you aware of any contacts?

Mr. SKIBINE. I think there were some documents shown to me during my depositions, and there were many documents shown to

me, that would have indicated such. But again, Mr. Cox, I think Ms. Sibbison is sitting back here if you have any questions.

Mr. COX. I am asking a question about what you know.

Mr. SKIBINE. I certainly did not have any knowledge at that time.

Mr. COX. I'm asking a different question than what you are asking. I'm asking if you know as a witness sitting here under oath.

Mr. SKIBINE. I think if you want to show me a document and ask me whether I've seen this document during my deposition and it was presented to me by counsel——

Mr. COX. But it is your testimony here, under oath, that you do not know as we sit here today that Heather Sibbison was at any time in the course of——

Mr. ELLIOTT. Mr. Cox, he has testified.

Mr. COX. Counsel, I'm in the process of putting a question.

Mr. ELLIOTT. Mr. Cox, you have put the question already.

Mr. BURTON. The counsel will let the gentleman answer the question. You can confer with your client at any time you want to. But he's the one testifying here today, not you. You're not under oath, sir.

Mr. ELLIOTT. I understand that, Mr. Chairman. But he has some rights not to have these questions continually put to him.

Mr. BURTON. You can confer with your client, but your client is the one that's testifying. And I'll be the judge of whether or not the gentleman is being badgered. Now, it appears to the Chair that he is not trying to answer the question and what Mr. Cox is trying to do is get him to give a direct answer. That's all he is asking.

Mr. WAXMAN. Point of order, Mr. Chairman.

Mr. BURTON. The gentleman will state his point of order.

Mr. WAXMAN. As I recall, the precedent of the Ollie North hearing, the attorney, was not required to be a potted plant when his client's interests were at stake. And I think that if the attorney has something to say with respect to his client's rights, he is here for that purpose and we ought to respect that fact.

Mr. COX. Mr. Chairman, if I may.

Mr. BURTON. Just 1 second. According to our counsel, House Rule XI 2.(k)(3) of the House rules states clearly that he can confer with his counsel but he's the one that should answer. And I don't know what they did in the Ollie North case. And I'm not sure the rules of the Senate or the rules of the independent counsel at that time were the same as what we have in the House. But we're going to adhere to the House rules, Mr. Waxman.

Mr. WAXMAN. The House rules were in effect when you allowed David Wang's attorney to testify on behalf of his client's interests.

Mr. BURTON. The Chair has ruled.

Mr. Cox, you may continue.

Mr. COX. I thank you. And with respect to counsel, if you have an objection to a question I put, I'm certain the Chair is willing to entertain it and I'm personally willing to withdraw or restate the question. I only ask of you that you permit me to finish asking the question before you interpose an objection. Is that fair? Thank you.

Mr. Skibine, I'm just trying to, having had this conversation with you, understand what is your testimony today as you appear before us under oath. Is it your testimony today that you are unaware of

any contacts between Heather Sibbison and the White House, in particular Assistant Harold Ickes, in the course of this matter?

[Attorney-client conference.]

Mr. SKIBINE. As I've stated before, I recall seeing during my two depositions, which went together for close to 13 hours, numerous documents that were submitted to Congress. Some of them may have been documentation between the White House and the Secretary's office. But because I'm under oath, I would like to be able to be presented with the document to see if I have seen it, and I've seen thousands of documents here, if I've seen that at some point.

The only thing I can testify today is that I did not see any such documents at the time of the Hudson Dog Track application.

Mr. COX. I'm trying to get at what you know today. And let's, in the brief time we have, and I can come back in a subsequent round and pick up with exhibit 317.

Mr. SKIBINE. 317?

Mr. COX. Exhibit 317 is a White House memorandum and it recounts what Heather Sibbison told the White House. It says, "I spoke with Heather Sibbison regarding the status of the Wisconsin dog track announcement. Interior will make an announcement in the next 2 weeks. At that time they are 95 percent certain that the application will be turned down." The memo also says, "She stated that they will probably decline without offering much explanation because of their discretion in this matter."

And I want to get your understanding of the way that the law works, section 465. Is it true that if you use section 465 and not section 20 you don't have to explain as much about what you're doing?

Mr. SKIBINE. I think that's correct.

Mr. COX. My time has expired. I thank you.

Mr. BURTON. The gentleman's time has expired.

Mr. SKIBINE. Mr. Chairman.

Mr. BURTON. Do you need a break right now?

Mr. ELLIOTT. Mr. Skibine needs a short break.

Mr. BURTON. The committee will break for 5 minutes, stand in recess for 5 minutes.

[Brief recess.]

Mr. BURTON. The committee will come to order.

Ms. Norton, you're recognized for 5 minutes.

Ms. NORTON. Thank you, Mr. Chairman.

There are two kinds of contacts that have been discussed here, and the mixture could prove very confusing. One is, of course, congressional contacts. You can call them political. And then there are White House contacts. You can call them political. I want to associate myself with the remarks of Mr. Lantos that the congressional contacts, the political contacts ought to be understood as the usual way in which Members of Congress do business. If they hadn't given the community uproar in this case, they would, it seems to me, have been guilty of either ignorance or representational malpractice.

No one has alleged that those contacts were improper. They certainly didn't involve campaign contributions, and that of course is what the subject matter of this hearing is. Now, I have the deposition of Ms. Sibbison, who I believe is here. And since on the other

side you have been repeatedly questioned about White House inquiries, I note that at this Ms. Sibbison's deposition she was specifically asked about this.

"Is it your recollection that Jennifer O'Connor was merely making a status inquiry into the application?" "That was my understanding, yes." "And it wasn't that the White House was giving its opinion on the application?" "Correct." "Or dictating the outcome?" "She expressed no opinion as to the outcome and made no requests regarding the outcome."

Mr. Chairman, I would ask unanimous consent that Ms. Sibbison be invited to testify so that we can really explore what the White House contacts were at this time or at a later time since that has tended to be of special interest to the Members who are here today?

Mr. BURTON. Ms. Norton, are you making an inquiry of the Chair?

Ms. NORTON. Yes, I am making an inquiry.

Mr. BURTON. We have the deposition of the lady in question and we already have our schedule set for the day, so we won't be able to do that. But we do have her deposition, which has been entered into the record.

Ms. NORTON. Thank you, Mr. Chairman.

I raise it only because this witness, who has testified that no contacts were made to him, has been repeatedly asked about such contacts and I'm trying to break through that. My line of questions really goes to how these decisions are made and whether they are made on basis of precedent, because while the concern here has been about off-reservations and how it affects a particular state involved, as a Member of Congress, I'm interested in how the precedent here would apply to the rest of the country.

First of all, are you required to follow precedence or can you make these decisions as you see fit on the basis of whatever information you have before you? Does what the information—does the decision you make with respect to a particular state have any relevance if a similar issue comes up with respect to another jurisdiction?

Mr. SKIBINE. The determinations on land acquisition in trust are made on a case-by-case basis.

Ms. NORTON. Sorry?

Mr. SKIBINE. The determinations on land acquisition in trust for gaming are made on a case-by-case basis.

Ms. NORTON. Well, I'm sure. If, in fact—or let me ask you this. Has off-reservation gaming generally been approved?

Mr. SKIBINE. There has been to my knowledge only one off-reservation gaming acquisition that has gone through the whole process, including the Governor's concurrence; and that is the acquisition of a site in Milwaukee, WI, for the Forest County Potawatomie Indian Tribe in 1990.

Ms. NORTON. So it would be very unusual for a reservation to be able to find some place somewhere and say, I want to go there even though it is many miles from my reservation; that would be very unusual in your experience and in the experience of the Interior Department?

Mr. SKIBINE. That's right. It is not—I think we have had overall with Hudson a total of 9 other proposals that have come to Washington.

Ms. NORTON. And there's a reason why it would be very unusual. Because, essentially, what you're doing is not operating on your reservation, but if I may use a metaphor, on the reservation of some other community that is not even close to your community in this case. And so, since this territory goes into trust, it would be taken off of the tax roles, except insofar as you were able to negotiate taxes, it would be taken off; it could not be used for residential purposes, for industrial purposes, for community development purposes. You can go some place many miles away and say to this community, hey, I choose you. You are nowhere near where my reservation is where I have a right to be, and I want to be where you are because you got some folks who would come in order to enrich my community. Is the result there that this community would lose access to this land for its own uses and its own purposes?

Mr. SKIBINE. That's correct.

Ms. NORTON. As somebody who has had to live with a payment in lieu of taxes, I am interested in the notion that at one point this negotiated PILT, payment in lieu of taxes, was negotiated at $5 million and thereafter was negotiated at $1 million. Does that mean that a community has to simply take whatever it can get in the negotiating process and is not entitled to be fully reimbursed for whatever land is taken off the tax roles?

Mr. SKIBINE. The tribes negotiate with their communities on these matters. We're not involved in those negotiations.

Ms. NORTON. So that's a matter of negotiation only?

Mr. SKIBINE. Right.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. BURTON. The gentlelady's time has expired.

Mr. Snowbarger.

Mr. SNOWBARGER. Thank you, Mr. Chairman.

In regards to my colleague's questionings about precedence, obviously it must have been important to you. In exhibit 316, you were asking—I believe you were asking David Etheridge, Kevin Meisner and Troy Woodward, "Are you aware of any cases addressing the Secretary's authority to refuse to take land into trust? We want to avoid making the determination under Section 20."

That's been called to your attention before, and I don't want to focus on that. But obviously you were concerned about precedence as well or you wouldn't have asked that question, I presume.

Now, my understanding from your testimony is that you are a supporter of Indian gaming for economic development; is that correct?

Mr. SKIBINE. Yes, that's correct.

Mr. SNOWBARGER. And you think it will give Indian tribes an opportunity to better their economic circumstances, right?

Mr. SKIBINE. That's correct.

Mr. SNOWBARGER. We've seen through a number of different exhibits today that Mr. Hartman and other members of the IGMS, as well as members of the Solicitor's Office, had made a determination that there was not a detriment and that there was a best in-

terest. In other words, under section 20, that case could be made that the Secretary should take this land into trust. Is that correct?

Mr. SKIBINE. No, that's incorrect. I think that the best interest determination was not made. And you can question Mr. Hartman from the next panel on that.

Mr. SNOWBARGER. Can I ask you a question?

Mr. SKIBINE. Sure.

Mr. SNOWBARGER. Who made the final decision?

Mr. SKIBINE. The final decision was made by Michael Anderson, Deputy Assistant Secretary for Indian Affairs.

Mr. SNOWBARGER. He signed the letter, so he is the one that made the final decision?

Mr. SKIBINE. That is correct.

Mr. SNOWBARGER. Let me get into a little different angle on this. When did you decide to use section 151 or section 465, depending on which one we're referring to, at the Secretary's discretion? When did you decide to use that argument?

Mr. SKIBINE. I cannot recall precisely when I formulated my final views on it. It was sometime in late May, early June, sometime in June, so that by June 29th my recommendation was made.

Mr. SNOWBARGER. OK. Now, it is my understanding of the procedure that the Department used before that you would first go through a section 20 analysis and determine whether the two-prong test was met. Wasn't it then the Department's standard procedure once that two-prong test was met to ask for the Governor's concurrence and then go through the section 151?

Mr. SKIBINE. No, I don't think so. I think that when I came to the Gaming Office that's one of the questions that I asked, and I asked Larry Scrivner on my staff at the time, well, do you do the 151 before or section 20 before. And my understanding was that they are done concurrently. But to the extent that there was some confusion about that in the field, I think that my view that was formulated is that it would be nonsensical to do a section 20 before you do a section 151.

Mr. SNOWBARGER. OK. Then, Mr. Chairman, I would like to have this introduced into the record. It is a letter to the Honorable Steve Gunderson, one of our former colleagues, and it is a letter from Hilda Manuel that's dated March 2, 1995.

Mr. BURTON. Without objection.

[The information referred to follows:]

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:
BCCO 5730

MAR 0 2 1995

Honorable Steve Gunderson
House of Representatives
Washington, D. C. 20515-4903

Dear Mr. Gunderson:

Thank you for your letter of December 29, 1994, addressed to Secretary Babbitt regarding a proposed casino at the St. Croix Meadows Greyhound Racing facility located in the State of Wisconsin. Your letter has been referred to this office for response.

You request clarification on whether or not the Bureau of Indian Affairs (BIA) considers the views of parties opposing a fee-to-trust acquisition by a tribe for gaming purposes. Because of the contentious nature of fee-to-trust acquisitions for gaming purposes, public sentiment and concerns of the negative impacts of casino gambling are two of several issues that are common. The Department of the Interior (Department) is sensitive to these issues. Consequently, we want to take this opportunity to assure you that comments opposing a fee-to-trust acquisition receive the highest consideration during the review process. However, it is important to point out that any opposition should be supported by factual documentation. If the opposing parties do not furnish any documented evidence to support their position, it is difficult, if not impossible, to make a finding that the acquisition is not detrimental to the surrounding community as required by the Indian Gaming Regulatory Act (IGRA), 25 U. S. C. §2719. The following discussion, albeit brief, is an explanation of the acquisition process for gaming purposes.

The application for this acquisition is currently under review by the BIA, Indian Gaming Management Staff (IGMS) office. The purpose of this review is to determine whether the requirements of Section 20 have been adequately addressed. If the application and supporting documentation are found to support a favorable determination by the Secretary of the Interior (Secretary), positive findings-of-fact on the two-part determination are prepared along with a letter to the Governor of the State seeking concurrence in the Secretary's determination.

The decision to place land in trust for the benefit of an Indian tribe is at the discretion of the Secretary and requires the applicant tribe to comply with the land acquisition regulations found in Title 25, Code of Federal Regulations (CFR), Part 151. When the acquisition is intended for gaming, the requirements of Section 20 of the IGRA, must also be considered, in addition to the requirements of 25 CFR 151. Additionally, the acquisition must be in compliance with the National Environmental Policy Act.

As a general rule, Section 20 prohibits any gaming on land acquired after October 17, 1988, the date of enactment of IGRA, unless an exception applies or the Secretary determines that the

gaming facility on newly acquired land will be in the best interest of the tribe and its members, and will not be detrimental to the surrounding community, and, the Governor of the State concurs in the Secretary's determination.

The "consultation" with appropriate State, local government officials and officials of nearby tribes is conducted by the local BIA Area Office. Upon completion of the consultation, the BIA Area Office must prepare an administrative record containing a summary of the information and comments received during the consultation, factual findings and conclusion on both the negative and positive aspects of the tribe's proposal. The record is then submitted to the Assistant Secretary - Indian Affairs for further review and approval.

The review is conducted by the IGMS office and the Office of the Solicitor. The purpose of the review is to determine whether the requirements of Section 20 of IGRA have been adequately addressed. If the application is found to be factually documented to support a favorable determination by the Secretary, positive findings-of-fact on the two-part determination are prepared along with a letter to the Governor of the State seeking concurrence in the Secretary's determination.

The Secretary's determination does not constitute a final decision to acquire the land in trust under 25 CFR Part 151. This decision is made after the application is found to be in compliance with 25 CFR Part 151.

If Gubernatorial concurrence is provided, the land may be taken in trust for gaming purposes. At this point the tribe 's application is then reviewed to determine whether the criteria of 25 CFR Part 151 have been adequately addressed. If Gubernatorial concurrence is not provided, the land cannot be taken in trust for gaming, but the tribe may ask that it be taken in trust for other non-gaming purposes.

As you can imagine, the decision to take land in trust for gaming purposes is made only after an exhaustive and deliberative review of all relevant facts and criteria. The process is often very lengthy and typically results in a large volume of information and documentation which is carefully reviewed by the office.

If you have further questions, please contact the IGMS office at (202) 219-4068 for more information.

Sincerely,

/S/ HILDA MANUEL

Acting Deputy Commissioner of Indian Affairs

02762

bcc: George SRibine
Kevin Meisner

02763

Mr. SNOWBARGER. I believe you're having a copy handed to you, and I'd call your attention to the second page of that document. First of all, on the third page it shows that a blind carbon copy went to you; is that correct?

Mr. SKIBINE. That's my name on there, yes.

Mr. SNOWBARGER. So you've seen this letter before. If you go back to page 2, I want to start with the second full paragraph on that page and just read through this. It says,

> The review is conducted by the IGMS office and Office of the Solicitor. The purpose of the review is to determine whether the requirements of section 20 of IGRA have been adequately addressed. If the application is found to be factually documented to support a favorable determination by the Secretary, positive findings-of-fact on the two-part determination are prepared along with a letter to the Governor of the State seeking concurrence with the Secretary's determination.
>
> The Secretary's determination does not constitute a final decision to acquire the land in trust, under 25 CFR, Part 151. The decision is made after the application is found to be in compliance with 25 CFR, Part 151.
>
> If Gubernatorial concurrence is provided, the land may be taken into trust for gaming purposes. At this point the tribe's application is then reviewed to determine whether the criteria of 25 CFR, Part 151, have been adequately addressed.

To me that letter, signed again by Hilda Manuel, indicates that the regular procedure is to go through section 20 analysis, Governor's concurrence, then section 151. In this case, you jump from section 20 immediately to 151, without getting the Governor's concurrence or not, and it seems to me that we have another irregularity in the procedure here. And I'd like for you to explain to me why you did not follow Departmental procedure that had been set out in a letter March 1995, in response to a congressional inquiry.

Mr. SKIBINE. I think that my views, as I said before, when I came to the Gaming Office is that it would not make much sense to go through the section 20 process before you do the 151. So I don't really know what happened before I was the Director of the Gaming Office. And frankly, if it was done that way, then it was wrong.

When I came in there, to me it seemed that we would not want that Indian tribes go through the section 20 process, which essentially includes a lot of consultation, a lot of studies and is very lengthy and get a Governor's concurrence and then having the Secretary decide first. What he should have done, first of all, is decide whether he actually wants to take this land into trust to exercise this discretion. If you're going to do that and if the Secretary says no, then it makes a mockery——

Mr. SNOWBARGER. Well, I don't want to be argumentative.

Mr. SKIBINE. That is the point, though.

Mr. SNOWBARGER. But you took that position in February 1995. This is a letter, which you received a copy of, in March 1995. And you say the reason you do not want to go through the section 20 analysis is all the time and effort that would be involved in doing that. That time and effort had been put in and the determinations had been made by local offices. In fact, you have a draft of an opinion, and again it is at your request, a draft of an opinion that would allow the Secretary to determine that under section 20 it was in the best interest of the tribe and that it was not detrimental to the community.

[Attorney-client conference.]

Mr. SNOWBARGER. My time has expired, Mr. Chairman.

Mr. BURTON. I will let the witness answer and then we will move on.

Mr. SKIBINE. First of all, let me say that the March 8th Department memo does not say—the June 8th does not say that the application is in the best interest of the tribe. And then the Gunderson letter is March 2, 1995. My determination was made in 1995. This is much later. It is approximately a month after I had been in the office. I'm not sure that I saw this letter or it was showed to me at the time it was being prepared for Hilda Manuel's signature.

But definitely by the time I formulated my views in June, it is my position, and it is my position now, that the section 151 analysis has to be done before. And subsequently we designed a checklist to guide—inform the field on how to process land acquisitions and section 20. And it is clear from that that the section 151 process has to be done before.

Last February I had a conference of all gaming coordinators throughout the country in the middle of February, and I think my direction to them was that when you process section 20 and 151 land acquisition applications you have to do the 151 first.

Now there is a part of 151 that you have to do at the end and that is technical items relating to the Solicitor's Office work on titles. So there are technical features of 151 that cannot be processed before the application is actually ready to be taken into trust. But as far as the determining that the Secretary—well, the Secretary, determining whether he wants to take the land into trust, I think that that decision is—fundamentally has to be made at the beginning.

Mr. SNOWBARGER. Mr. Chairman, I am just suggesting that 1 month after taking this position, Mr. Skibine violated basically the policies set out by Hilda Manuel in a letter to one of our colleagues, Honorable Steven Gunderson, in March 1995. Whether that was his understanding or not, he was copied with that letter. He did not follow that procedure.

Mr. BURTON. Mr. Kucinich.

Mr. KUCINICH. Thank you, Mr. Chairman.

To the witness, how do you pronounce your name?

Mr. SKIBINE. Skibine.

Mr. KUCINICH. Mr. Chairman, I want to take the questioning back to what I think is one of the central points of this whole discussion we have been having this last couple of days.

Mr. Skibine, we have heard some testimony from you today about Mr. Havenick's statement yesterday that you said that political people were the ones that turned down the application. I believe you testified that you did not say that; is that correct?

Mr. SKIBINE. That's correct.

Mr. KUCINICH. Let me read to you Mr. Havenick's full statement, which I believe goes even further than that. As quoted in the Washington Post article today, Mr. Havenick said that you told him, "Look, don't blame me. We"—and that's the career employees—"would have given it to you. It was the political people that turned you down."

Now, Mr. Havenick said that you told him not only that the political people made the decision, but that you, yourself, would have

approved the application if it weren't for the involvement of the so-called political people.

Now, his assertion that you would have approved the application or that you wanted to approve the application, did you say that to Mr. Havenick?

Mr. SKIBINE. No, that would have been incorrect.

Mr. KUCINICH. So the sworn testimony we received yesterday from Mr. Havenick who said that you would have approved the application is simply incorrect?

Mr. SKIBINE. That's correct. I think the record stands for itself on this issue.

Mr. KUCINICH. I want to make sure I am clear on this now, Mr. Skibine. Mr. Havenick's testimony yesterday on this issue wasn't true? Was it true or not?

Mr. SKIBINE. Well, as I've said this morning, I think that Mr. Havenick may have misconstrued something I said. I don't want to accuse anyone.

Mr. KUCINICH. OK. I understand. I understand. I am just trying to get to a point here.

Now, Mr. Havenick also told us yesterday that you said it was not just you who would have approved the application if it hadn't been for the so-called political people, but that you were speaking, in effect, for all career employees present at the meeting.

Now, let me repeat again what he told us, with an emphasis on this new point. He told us that you said, quote, Look, don't blame me. We would have given it to you. It was the political people that turned you down, end of quote.

We have already discussed now that Mr. Havenick's testimony, as to your feelings, was not true. Now let me ask you about his assertion that you were speaking for other career employees at the Department. Did you tell Mr. Havenick that other career employees would have approved the application if it hadn't been for political interference?

Mr. SKIBINE. No, that—that's not true.

Mr. KUCINICH. So on this point Mr. Havenick was incorrect?

Mr. SKIBINE. That's correct.

Mr. KUCINICH. So to sum all of this up, Mr. Havenick was incorrect about three things: First, he was incorrect when you said that the final decision was made because of politics; second, he was incorrect that you said that you, yourself, would have recommended approval of the application; and third, he was incorrect that you said that other career people on the staff would have recommended approval of the application; is that right?

Mr. SKIBINE. That's right.

Mr. KUCINICH. And with regard to all these points, it is remarkable but you haven't said that Mr. Havenick was lying or whether he was just mistaken. But you know he was incorrect? Is that——

Mr. SKIBINE. Yes.

Mr. KUCINICH. Thank you. Thank you. No further questions. I will yield back the balance of my time—excuse me, I yield to Mr. Barrett.

Mr. SKIBINE. Can I make one point? Maybe he didn't understand what I was saying. Maybe my thick Osage Oklahoma accent was

more than he could get to it. I don't know. There has got to be a reason.

Mr. WAXMAN. Well, you are being very generous.

Mr. KUCINICH. It is also "il n'y a pas de quoi."

Mr. BARRETT. Very quickly, if I could, it is unfortunate that Hilda Manuel is not here to talk about her letter. We should note for the record that we did request that you be able to testify here. That request was denied.

I would also note, however, that the January 23, 1992, denial of the Santee Sioux tribal counsel's application appears to me at least to be a denial based on section 465 and section 20, both. And I would infer——

Mr. SNOWBARGER. Will the gentleman yield? Will the gentleman yield?

Mr. BARRETT. I don't have the time right now, but if the Chair would give me more time, I would be happy to.

Mr. SNOWBARGER. If I am recalling correctly, the Governor did give a nonconcurrence in that situation that you are talking about.

Mr. BARRETT. But what I am saying is that in the letter, I am looking at the letter here, and the language appears to me to be both 465 language and——

Mr. SNOWBARGER. And the language of the letter also indicates the Governor's nonconcurrence with taking the land into trust.

Mr. BARRETT. The Governor of Iowa.

Mr. SNOWBARGER. I understand. That is the State in which the land was located in.

Mr. BARRETT. The other point, very quickly, as we look at Hilda Manuel's letter, she is talking about the decision to acquire the land into trust. She doesn't talk about it being a three-step process if it is a denial. I certainly understand if it is an approval you may want to have the first decision, then the Governor's decision, then the taking into trust decision. Of course, we will never know the answer to that because she is unable to testify. Thank you.

Mr. SKIBINE. I want to make one point. I want to make one point that the—with respect to the 151 process that the area director's transmittal of the 151 part on April 20, 1995, to us indicates that the tribes, three tribes specifically requested that the 151 process be completed at that point. So we——

Mr. BARRETT. Could you repeat that, please? I missed that, if you could just repeat it.

Mr. SKIBINE. I think that the area office's 151 determination was transmitted to our office on April 20, 1995. And I think it was at the tribes' request.

Mr. BARRETT. The tribes requested that both decisions be made simultaneously?

Mr. SKIBINE. Yes.

Mr. BURTON. Mr. Mica.

Mr. MICA. Mr. Chairman, I would like to yield to Mr. Shadegg.

Mr. SHADEGG. I thank my colleague and I thank the chairman.

Mr. Skibine, your prepared statement here before the committee today indicates that you did discuss this decision—this subject with civil servants in the BIA and the Solicitor's Office as well as with Secretarial appointees. Those Secretarial appointees would include both John Duffy and Heather Sibbison; is that correct?

Mr. SKIBINE. Yes, that's correct.

Mr. SHADEGG. Your statement goes on to say that you didn't have any contact with various people, including the White House. And you did not, is that correct?

Mr. SKIBINE. That's correct.

Mr. SHADEGG. You do not know what contact they had with the White House; do you?

Mr. SKIBINE. No, I don't.

Mr. SHADEGG. You, for example, don't know that the White House appeared to know of your decision and of the basis of your decision the exact same day that you made it?

Mr. SKIBINE. At the time of the Hudson Dog Track application, I was not aware of White House contacts.

Mr. SHADEGG. So you didn't know that the White House knew of that decision the same day you made it. You referred to June 29th as being the day that you made your decision.

Mr. SKIBINE. I made my recommendation.

Mr. SHADEGG. Your recommendation, OK. But, in fact, you had already made a decision as of June 6th; hadn't you? I refer you to exhibit 316, which is an e-mail from you to Dave Ethridge, Kevin Meisner and Troy Woodward, in which you say the letter will decline to take the land into trust, and then you say pursuant to part 151, which is the discretionary authority. So in that sentence you had already said the letter will decline. The decision in your mind had been made, right?

Mr. SKIBINE. Yes, as I testified earlier today, I think it was either in late May, early June at some point.

Mr. SHADEGG. You go on in that e-mail to say, We want to avoid making the determination under section 20 of IGRA. You wanted to avoid making the decision under section 20 of IGRA because you and the other professionals at BIA had already decided that you couldn't sustain a decision turning down this application under IGRA; hadn't you?

Mr. SKIBINE. Not necessarily.

Mr. SHADEGG. It is pretty evident through all of these e-mails that every single professional staffer at the Department of Interior said we can't turn this down under section 20 of IGRA, and I can walk you though that and show it to you if we need to and that every single political appointee said no, we have got to turn it down on that basis.

Mr. SKIBINE. I think that the Hartman memo was signed on June 8, 1995.

Mr. SHADEGG. Two days later the Hartman memo comes out and says, We can't turn this down. Indeed, we can't find there is a detriment to the community under IGRA in this particular instance and therefore we ought to approve it. That is 2 days later. That is one memo that says, We can't turn this down under section 20 of IGRA, at least not on detriment to the community, right?

Mr. SKIBINE. The Hartman memo, I think—and he can testify to that—essentially concluded that there was not enough, in his opinion, evidence of detriment to justify a finding of detriment under section 20.

Mr. SHADEGG. Therefore you couldn't turn it down?

Mr. SKIBINE. Excuse me?

Mr. SHADEGG. Therefore you could not turn it down under section 20?

Mr. SKIBINE. We wouldn't be able to make that determination.

Mr. SHADEGG. Why did you write, we want to avoid making the determination under section 20?

Mr. SKIBINE. Well, I did not want to use section 20 because I did not want to set a precedent, I guess, at the time. I didn't think that we should use section 20. And I think that the—the Hartman memo gave me concerns about reliance on section 20, as I've testified before.

Mr. SHADEGG. Well, on June 30, you had sent your first draft to Heather Sibbison, and she sent you an e-mail and it looks like at 11:50 a.m., that is exhibit 322, in which she says, we may not want to include in our rationale the opposition of other tribes.

If you look then at exhibit 321, you respond by e-mail saying that you can defend the reference to other tribes in the context of a discretionary decision. At that point in time you still wanted to base it on the Director's discretion and not on section 20 of IGRA.

Mr. SKIBINE. You know, I'm at a loss here in the sequence of these e-mails. I'm sorry.

Mr. SHADEGG. I have just given you the number of them. June 30th, exhibit 322.

Mr. BARRETT. They do go backward; 322 was sent earlier than 321. I think that that might be helpful.

Mr. SHADEGG. They are both sent the same day; one sent earlier in the day and one sent later in the day.

Mr. SKIBINE. I can't even read this. OK. That's 704.

Mr. SHADEGG. I am going to run out of time.

You clearly at that point still wanted to defend it based on the Director's discretion.

There are two more exhibits, exhibit 326 and 327–1 and 327–2. In every single one of those—and unfortunately I am not going to get the time—every single professional within the Department of Interior says we cannot sustain this decision based on section 20 of IGRA. We don't have the basis to do it. And in the final one, it says that, No. 1, you rewrite the memo based on instructions from Heather Sibbison and John Duffy, the two political ones, and then you write a separate e-mail that said you hope when you rewrote it you met their desire. The rewriting added back into the decision IGRA. And then I believe Kevin Meisner writes you and says, there's no way, in exhibit 327–2, that we can sustain this decision based on IGRA, and, therefore, we have to base it on the discretion of the Secretary.

If you can find in there a single shred of evidence that shows to me that any line-level officer in the Department of the Interior said, we could sustain it under section 20, I wish you would do that. And alternatively, if you can point out the pressure that was being brought to bear on you to change the decision and to base it in part on IGRA, rather than solely on the Director's discretion,

I don't think you can find a shred of documentation in that anywhere in what you have found, in anywhere in these e-mails. It is very clear that everyone down the line said, we can't sustain this decision under IGRA, and everyone down the line said, we can't base it solely on the Director's discretion. Why is that?

[Exhibits 326 and 327 follow:]

Author: George Skibine at ~IOSIAE
Date: 7/8/95 5:36 PM
Priority: Normal
Receipt Requested
TO: Miltona R. Wilkins
CO: Tom Hartman
TO: Paula L. Hart
TO: Tina LaRocque
Subject: Hudson Dog Track

---------- Message Contents ----------

I have left on Tona's desk the redrafted version of the Hudson letter, per Duffy and Heather's instructions, along with the disk I used. Please make sure it is put in final form, and brought up to Heather first thing on Monday. Please have copies made for Bob Anderson, Kevin, ~~Troy,~~ and Hilda. The Secretary wants this to go out ASAP because of Ada's impending visit to the Great Lakes Area. Also, give Larry a copy of this message, and tell him to contact Tom Sweeney and keep him advised of any development on Hudson letter. I do not have a copy of the original Hudson letter draft, because it is no longer on my disk (George Skibine Docs). However, I cc: mailed that document to some of you and to SOL if it needs to be retrieved.

65 009

(489) Item: KEVIN MEISNER (11:18 11-[illegible]-95) (1 bytes: 22 ln)
To: TROY WOODWARD
Subject: Re: Hudson Letter
---------- Forwarded with Changes ----------
: KEVIN MEISNER at -SOL_HQ 7/11/95 9:36AM (1199 bytes: 16 ln)
To: George Skibine at -[illegible], V. Heather Sibbison at -SOL
Subject: R: Hudson Letter
---------- [illegible] Contents ----------

Text item: 1: Text_1

From George Skibine 7-6-95: You should get a redrafted version of the Hudson letter first thing Monday morning. I hope it meets Duffy's direction. If it does not materialize, please call Larry Scrivner who will be acting IGMS Director until my return.

From Kevin 7-11-95: When this letter did not come up Monday morning, it was sent directly to Heather and changes were made. I did not get a copy until Tuesday morning after a discussion with Paula and Larry. Why are we changing our analysis to deny gaming [illegible] from 20? I thought after the Friday meeting that everyone (except Duffy who we had not yet consulted) agreed that there was not enough evidence supporting a finding of "detriment" to the surrounding communities under section 20 and therefore we would decline to acquire the land under it ...

Item 1:

Apparently Bob Andrews did review the letter late Monday. I talked with him Tuesday and he thought that since Duffy wanted the Section 20 finding so badly that we would let the letter go through. I still think that there was not enough evidence for a section 20 finding of detriment.

Mr. BURTON. The gentleman from California?

Mr. SKIBINE. Can I respond?

Mr. WAXMAN. I am going to ask unanimous consent that Mr. Shadegg, who would otherwise get 5 more minutes, but he has a little bit over, that he have 3 more minutes so that we could conclude if the gentleman would like more time?

Mr. SHADEGG. I am on Mr. Mica's time.

Mr. WAXMAN. I know that. Do you want 5 more minutes?

Mr. SHADEGG. Sure.

Mr. WAXMAN. I am suggesting that rather than have an interruption, that you be given 3 more minutes now and not take your 5 minutes after we go.

Mr. SHADEGG. I don't mind the interruption. I will take the 5 later.

Mr. BURTON. Let's proceed under the order. You have the time, Mr. Waxman, 5 minutes.

Mr. WAXMAN. I pass right now and reserve my time.

Mr. BURTON. Mr. Shadegg.

Mr. SHADEGG. Here we are. Now I have 5 minutes. Thank you.

Mr. WAXMAN. And we left it with Mr. Skibine wanting to respond, so give him a chance.

Mr. SHADEGG. I think Mr. Skibine never had a chance to respond to my last question.

Mr. BURTON. This will not come out of Mr. Shadegg's time. Mr. Skibine, you may respond, and we will start Mr. Shadegg's time, because we said we would let him respond at the end.

Mr. SKIBINE. I think to decide why those above me changed the decision in the way they did—changed the recommendation in the way that they did, you would have to ask them. The reasons for the change—I want to point out that the ultimate conclusion, the ultimate outcome not to take the land into trust was not changed, but the reasons for the decision, the rationale, were changed, and I'm not prepared to discuss the reasons that others thought should go in there.

Mr. SHADEGG. Well, you have called this clearly your decision. And in point of fact, you have just pretty well acknowledged that they changed the basis of the decision. And if you have trouble with that, let's look at exhibit 326.

[Note.—Exhibit 326 may be found on p. 333.]

Mr. ELLIOTT. Mr. Shadegg if your question is premised on his having said it was his decision, I'm going to object to the question. He has not testified it was his decision. It was his recommendation.

Mr. SHADEGG. OK. It was his recommendation. I think, quite frankly, he has been quoted in the common press as saying that he was the bureaucrat that made this decision.

Mr. SKIBINE. If that's the case, I want to clarify the record. I, as a GS–15 civil servant, did not have the authority to make the final decision. And what I did is simply make a recommendation to my superiors.

Mr. SHADEGG. Let us look at exhibit 326, if we could. It is an e-mail from you to a series of people, but it says: "I have left on Tona's desk the redrafted version of the Hudson letter, per Duffy and Heather's instructions."

So you redrafted the decision on or about July 8th per instructions from John Duffy and Heather Sibbison; is that correct?

Mr. SKIBINE. That's right. I think I came back from vacation, and I went to gather my documents for my Denver trip, and I found in my box a marked up—an edited version of my draft, and I ministerially incorporated those changes in there and then left them for Tona, my secretary.

Mr. SHADEGG. And then if you would refer to exhibit 327–1. On that date, in that particular document, you are sending an e-mail to Kevin Meisner with a carbon copy to Troy Woodward, and in it you say, I hope it—meaning the redrafted decision letter—meets Duffy's directions; is that right?

Mr. SKIBINE. That's right. That's what it says here.

Mr. SHADEGG. And then on the bottom half of that same exhibit, there is an e-mail from Kevin Meisner, I believe, back to you, in which this whole discussion of the basis of the decision goes on. And reading the bottom half of that he says,

> Why are we changing our analysis to deny gaming under section 20? I thought after the Friday meeting that everyone, except Duffy who was not yet consulted, agreed that there was not enough evidence supporting a finding of "detriment" to the surrounding communities under section 20, and, therefore, we would decline to acquire the land under section 151.

Once again we have another level person in your office, a lawyer, I guess, at Solicitor's Office, saying, we can't do this under section 20. We've got to do it under just the Secretary's discretion; is that right?

Mr. SKIBINE. I think that the e-mail is not directed to me. It's directed to Troy Woodward.

Mr. SHADEGG. OK.

Mr. SKIBINE. But you read it.

Mr. SHADEGG. Thank you. Let's talk about Troy Woodward.

We go to the next exhibit, which is exhibit 327–2, and in that Troy Woodward expresses his shock and disappointment in an e-mail that I guess was back to—back to Troy Woodward.

> Apparently Bob Anderson did review the letter late Monday. I checked with him Tuesday, and he thought that since Duffy wanted the section 20 finding so badly, that we would let the letter go through. I still think that there was not enough evidence for a section 20 finding of detriment.

It seems to me that every single person who touched this, other than John Duffy and Heather Sibbison, said, we cannot sustain this decision under IGRA, so we better do it based on the Secretary's discretion. And here they respond that John Duffy desperately wanted to have IGRA back in there, and not base it solely on the Secretary's discretion. That's pretty evident, isn't it?

Mr. SKIBINE. I mean, you know, you make whatever inferences you want from this e-mail. This is not my e-mail. I want to point out though——

Mr. SHADEGG. I asked you at the outset if, in fact, you believed the decision could be sustained based on IGRA and asked you if isn't it true that the e-mails document that all of the Department people, other than the political appointees, said, we cannot sustain this decision based on IGRA, and therefore we should do it based on the Secretary's discretion. And it was John Duffy and Heather Sibbison, but principally John Duffy, who said, we cannot base it

solely on the Secretary's discretion; we have to base it on IGRA, and a compromise was struck, and both were put into the letter, weren't they?

Mr. SKIBINE. I think that Bob Anderson, who was the Associate Solicitor for Indian Affairs, should also be asked about his legal opinion. The issue here is whether, legally, there was enough evidence of detriment under section 20, and obviously Mr. Duffy and Mr. Anderson thought that there was.

Mr. SHADEGG. I want to get one last question. I find it fascinating that on the day that you wrote to your lawyers saying, we do not want to base it on IGRA, you asked them if there was any basis for basing it on—or any case law that would support basing it on the Secretary's discretion. That was June 6, 1995. I find it fascinating that on that same day, David Meyers, an employee of Mr. Ickes, writes a memo to Jennifer O'Connor, also an employee of Mr. Ickes, or who worked for Mr. Ickes, and says that you, in fact, turn it down, and you would turn it down based on the Secretary's discretion, the exact same reason found in your e-mail to your two lawyers. Do you have any comment on that?

Mr. SKIBINE. No, I have no comment on that.

Mr. SHADEGG. Thank you, Mr. Chairman. My time has expired.

Mr. BURTON. The gentleman's time has expired.

Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman.

Mr. Skibine, all the people here are Members of Congress. We ask our staffs to do drafts for us, perhaps it is to respond to a constituent letter, and the recommendation would be to take a position with the following arguments. It could then often—the draft would come to me or my administrative assistant, and he might say, well, change the backup arguments for the conclusion, but keep the conclusion.

All you have been asked about is the same circumstance. You came up with a recommendation. You would have based it on different arguments. It was a recommendation that went on up the chain of command, and they came back and suggested a different argument that you thought was too confining, but nevertheless that was what they were suggesting. Is this the situation that we are talking about here?

Mr. SKIBINE. Yes, that's correct.

Mr. WAXMAN. I find it sort of amazing that we are going over and over and over on this issue, since, as the chairman pointed out, the reason we are holding these hearings is to see whether there was any kind of political corruption in the decision. The decision that you recommended was a decision that was the final result. There was no change. All we had were some arguments for different basis for the very same decision.

Yesterday, we spent a lot of time with Members arguing this was the right decision, but there is something wrong with Interior reaching that decision. Today, no one is arguing with your decision; they seem to be arguing with the basis for your decision.

The fact of the matter is a decision was made. It appears to most of us that it was made conscientiously by you as a civil servant on the merits, and they keep on asking you questions about e-mails

and documents by Heather Sibbison and Hilda Manuel, when you keep on saying that they ought to ask them.

The fact of the matter is that both of those individuals gave a deposition, and the committee didn't like the depositions because it didn't corroborate their point of view. So even though we thought they ought to testify directly on what they meant when they wrote these different e-mails or memos, we are being denied the opportunity to ask them those questions.

But I gather when all is said and done, what they were suggesting to you, or others were suggesting to you, was a different way to frame the same decision, not a different basis for it, but the same decision nevertheless. Is that where we are?

Mr. SKIBINE. Yes. I think that, first of all, my June 29th memorandum was a recommendation letter, a recommendation. What I do find amazing is that I'm asked to comment about others' e-mails and views, and I certainly would prefer sitting over here and having these people who wrote these e-mails and made those statements should be here answering your questions.

Mr. WAXMAN. We thought that would have made a lot more sense, and we asked that they be permitted to testify, but we were turned down, even though Hilda Manuel is the one who could answer not only the question on the merits, but the very question about whether the Secretary had exerted any political influence. In fact, she could clarify the fact from her deposition that there was no political influence by the Secretary. The Secretary said, let the career people decide it. I guess when the decision was finally made, it's under the aegis of the Secretary.

Mr. SKIBINE. The decision was made by Deputy Assistant Secretary Michael Anderson.

Mr. WAXMAN. But when it is signed off on, it is the Secretary's decision, just like it's the President's administration, even though he didn't decide everything within his administration.

Mr. SKIBINE. Oh, yes, that's right. Yes.

Mr. WAXMAN. I want to yield to Mr. Barrett.

Mr. BARRETT. Just we are getting near the end. I want to make sure I understand this. Fortunately for you we are getting near the end. You mentioned earlier, I thought, that the Department—the Secretary had approved an off-reservation gaming site for the Potawatomi in Milwaukee in my district; is that correct?

Mr. SKIBINE. That is correct.

Mr. BARRETT. Aside from that one, where else has the Secretary approved an offsite—off-reservation gaming facility in the United States?

Mr. SKIBINE. Aside from that, and that also would be better answered by Ms. Manuel who was my predecessor as the Indian gaming director, but before my watch, I think the Secretary had approved an acquisition for the Sault St. Marie tribe in downtown Detroit, MI, but the Governor of the State of Michigan didn't concur in that determination.

On my watch, we forwarded a positive section 20 determination to the Governor of the State of Washington on a piece of land owned by the Kalispell tribe of Indians in Airway Heights, WA, and that determination is still pending with the Governor.

There may be others where the Secretary made a positive determination. I can't recall it offhand. But in any case, the Forest County Potawatomi one was the only one where the Governor actually concurred.

Mr. BARRETT. Thank you very much.

Mr. BURTON. Secretary Babbitt indicated that the decision was made by an 18-year career veteran.. And Michael Anderson, I believe, is a political appointee. And the only other one that fits the description is you and you are saying you are not the one who made the final decision?

Mr. SKIBINE. Well, the final decision was signed by Michael Anderson.

Mr. BURTON. But Secretary Babbitt said it was an 18-year career employee who made the final decision.

Mr. SKIBINE. I made the recommendation, the initial recommendation.

Mr. BURTON. Under section 151, Secretary Babbitt or his designee is the one who has to make the final decision; isn't that correct? Under section 151?

Mr. SKIBINE. That's right.

Mr. BURTON. OK. Now, the thing from my perspective, and I am trying to clarify this in my mind, when you cut through all of this, Mr. Duffy and Ms. Sibbison and others were involved in the process. Mr. Duffy was the chief counsel to the Secretary.

Mr. SKIBINE. He was the counsel to the Secretary.

Mr. BURTON. Counsel to the Secretary. And therefore he had some influence in the decisionmaking process with the Secretary because he advised him on legal matters. Mr. Collier was the chief of staff.

Now, through all of this everyone has been saying there was no political influence or chicanery, but shortly after this both Mr. Duffy and Mr. Collier—I want to go back to this—left and went to work for a law firm and represent the tribe that benefited from the decision. That same tribe and the other tribes that were interested have contributed somewhere between $300,000 and $350,000. And Mr. Collier who was the chief of staff personally delivered a check from the Shakopee to the Democratic National Committee somewhere between $50,000 and $100,000.

Now, you know, maybe there was no political influence. But it sure stinks. It sure smells like it. I don't understand it. No political influence? All the e-mails and everything go out the window. You make all kinds of excuses and reasons why this was disapproved even though those people who were making $6,000 a year for every man, woman, and child while the tribe that is making $400,000 a year for every man, woman, and child makes big contributions and continues to benefit and you say that there was no political influence?

We do know this: There was between $300,000 and $350,000 maybe even a half a million dollars, given from the tribes that benefited to the DNC. We do know that Mr. Duffy and Mr. Collier, both leaders in the Department of the Interior, have nice, cushy jobs with a law firm and they both represent the Shakopee Indian tribes and maybe those other tribes.

We also know that Mr. Collier, the chief of staff, with the Secretary of Interior, personally delivered a check from the Shakopees between $50,000 to $100,000. Now, maybe there wasn't any political influence. Maybe they just gave that money out of the goodness of their hearts. Maybe they just gave those jobs to those people because they liked them, not because they had influence at the Department of Interior when the decision was made. But you know, it sure does smell.

I yield back the balance of my time. Do you have any more time you would like to have?

Mr. KANJORSKI. If I could take a few moments, Mr. Chairman.

Mr. BURTON. The gentleman is recognized.

Mr. KANJORSKI. To followup on what the chairman has just said, we are concentrating on the people that were involved who eventually went out to the law firms and got jobs. But I think the public should know and the record should reflect that Mr. Havenick contributed sizable amounts of money to candidates, and the Governor. He retained one of the most prestigious lobbyists, who was a law school classmate of the Secretary, and had three occasions to meet with the Secretary, Mr. Eckstein, who obviously didn't come cheaply. He partook with individuals in Florida; Mr. Berlin, who was one of the most sizable campaign raisers for the Democratic party in Florida.

And so I seem to read this that, yes, there were campaign funds made on both sides; there were jobs obtained by people who were connected either through school ties with the Secretary or eventually went off to law firms that represented well-to-do clients, but the best way I read it is, Mr. Burton would like us to assume the post hocs fallacy: After this therefore because of this. And I don't think the facts in this case do support that.

I think the facts support that an 18-year professional was charged with making the final recommendation and conclusion, and as you testified you wrote that up. The only input of Mr. Duffy was to clean up some legal questions in your recommendation, not changing the substance of it. And then as a matter of process, inform—a Deputy Secretary put his signature to the decision but basically the decision was prepared to your analysis and your recommendation and that is the major party of the decision and your testimony that you, having prepared that several weeks before any of these contributions occurred or any activities occurred, went on vacation and came back, polished the final decision, sent it up, and that was the decision, and that if they wanted to exclude for total purposes they would have used section 465 which would have denied the right of appeal, the court case or any other methodology, just the full discretion of the Secretary to say no.

But you, in fact, relied on a different section, section 20, and the aggrieved parties have exercised their right for reappeal and a court matter to have the issue tried and that is where the process is. And for all intents and purposes, the Department acted as it should have acted and came up with a decision, but there are always winners and losers and the losers aren't happy with the decision. Thank you very much.

Mr. WAXMAN. Will the gentleman yield to me?

Mr. KANJORSKI. Yes.

Mr. WAXMAN. Now, the chairman may say this all stinks because he wants it to stink, but it is hard to understand why we have hearings when you have sat here patiently answering the questions over and over and over again that your recommendation was based on the merits without political inference. And those who could give further information that would confirm that same point of view weren't permitted to testify.

I know the chairman wants a scandal because that is the purpose of this committee at this point. It is not to get truth. It is to scandalize people in the Democratic administration. But when you have witnesses the chairman calls and the witnesses don't corroborate what he wants, his preconfirmed conclusion, I don't see why we spent all this time in these hearings and why your time has been taken up from other responsibilities. But I very much thank you for your participation.

I do want to ask you one question. I guess because we talked about—your attorney raised the issue as well, about your being badgered in the deposition. Was today's hearing much better for you than the deposition that you faced by our committee prior to this meeting today?

Mr. SKIBINE. I have no complaints with today's hearing.

Can I make a statement? I think that what I've testified to is that as far as my recommendation and the work of the Indian Gaming Management Staff is concerned, those recommendations were made on the record and there was no undue influence or political shenanigans that we knew about.

As far as the motives or the beliefs of others above me, I cannot really address that. The only thing I can say is that to my knowledge it seemed that the opinions of Mr. Anderson, Mr. Duffy, and Ms. Sibbison and others were essentially stemming from their analysis of the merits.

Mr. WAXMAN. All you can tell us is what you know from your own experience. That is why we have you as a witness. It strikes me also how important it is that we have public hearings so that the questions are asked in public rather than these backroom private depositions where witnesses can be hounded and harassed and badgered and told by Members of Congress we can't get an honest answer from you when the answer is not what they want, even though it may be the truth. Better to let the world see a hearing and a witness answer the questions as honestly and as truthfully as you did. And you were very convincing. You said what you had to say from your knowledge. You don't know about what other people might have done or thought, and no one else has given us any evidence that the decision was other than as you say it was. Thank you.

Mr. BURTON. Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman.

I wanted to comment, sort of, in closing. I don't know if this is really a question, but I haven't had a chance to participate today. I just heard one of my colleagues from the other side say, though, that this was an example or these were examples of contribution of funds by Mr. Havenick in the Governor's race; and he cited that, I guess, to blur the issue at hand. And I recall quite vividly yesterday Mr. Havenick outlining for the committee that his contribu-

tions—the bulk of his contributions to Mr. Thompson, Governor Thompson—were actually long before any of this even came to light.

We are not talking about a period in which any funds changed hands at a time when a decision was being made. It was long before any of this was even conceived as a project, and it was based on his support of Mr. Thompson as a candidate.

Then we heard the ranking member try to close and question, the need for this hearing? The need for this hearing is the continual stonewalling by the administration and just about every Department, including this agency, of this committee. This is a committee of investigation and oversight, and I have a list I would like to make a part of the record, Mr. Chairman, of document production requests to the Department. In fact, documents were received, almost all of them, after the Senate concluded its business and only after we subpoenaed documents in December that we found lacking—December 12, 1997, and the compliance due date was January 2, 1998. Many of those documents did not come to us until just prior to this hearing. And here is a list of the documents that were not provided to this committee and the subsequent stonewalling of this investigation and oversight committee by another agency of the Federal Government.

So these are not accusations that we raise. These are accusations that have come about as a result of the discrepancy between the Secretary of the Interior and another witness and we need to get to the bottom of what took place.

We also have public statements by the Secretary saying that the decision to reject the permit was made by a bureaucrat who worked in Indian Affairs for 18 years based on the Department's policy that casinos should not be allowed in communities that did not want them. We have identified only one person that fits that description and that is our witness here today. I thank you, Mr. Chairman.

Mr. ELLIOTT. Mr. Chairman? Is Mr. Mica's list a list of documents that we, the Department of the Interior, have not yet provided?

Mr. BURTON. I think that is the list of the documents we requested, and those documents were not received until just recently.

Mr. ELLIOTT. I misunderstood him. I thought he said he had a list of documents that we had not yet provided.

Mr. BURTON. No, I believe the documents were received, but we didn't receive them until just recently, and that is one of the reasons we are holding this hearing.

Mr. MICA. And I ask that this list be made a part of the record.

Mr. BURTON. Without objection.

[The information referred to follows:]

DEPARTMENT OF THE INTERIOR: DOCUMENT PRODUCTION

I. **LETTER REQUESTING DOCUMENTS:** **AUGUST 20, 1997**
DUE DATE FOR COMPLIANCE: **SEPTEMBER 8, 1997**

Productions Received:

1. **October 23, 1997**
Contents: One file containing records regarding the St. Croix Meadows Greyhound Park.

2. **November 3, 1997**
Contents: One file containing records relating to the St. Croix Meadows Greyhound Park.

II. **DEPOSITION OF ROBIN JAEGER (SUPERINTENDENT, REGIONAL OFFICE) ON DECEMBER 11, 1997**

Q: When did you receive communication that you are requested to produce documents about the Hudson Dog Track matter?

A: Yesterday.

But for this deposition, Interior would have successfully kept information from the House, the Senate, and the civil plaintiffs.

III. **SUBPOENA REQUESTING DOCUMENTS:** **DECEMBER 12, 1997**
DUE DATE FOR COMPLIANCE: **JANUARY 2, 1998**

Productions Received:

1. **December 17, 1997**
Contents: One file containing records relating to the St. Croix Meadows Greyhound Park.

2. **January 2, 1998**
Contents: Six (6) boxes of records containing correspondence within the Department of the Interior related to the Hudson Casino application and subsequent litigation.

3. **January 13, 1998**
Contents: One file containing records relating to ongoing litigation in casino gambling case, travel authorizations for Thomas Collier, additional records from George Skibine, and schedules for Assistant Secretary Ada Deer [Deer's deposition was that day].

4. **January 16, 1998 – Friday Night**
Contents: One file containing records relating to the St. Croix Meadows Greyhound Park.

5. **January 17, 1998 – Saturday Morning**
Contents: One file containing records relating to the St. Croix Meadows Greyhound Park.

DEPARTMENT OF THE INTERIOR: DOCUMENT PRODUCTION

I. LETTER REQUESTING DOCUMENTS: AUGUST 20, 1997
DUE DATE FOR COMPLIANCE: SEPTEMBER 8, 1997

Productions Received:

1. October 23, 1997

2. November 3, 1997

II. DEPOSITION OF ROBIN JAEGER (SUPERINTENDENT, REGIONAL OFFICE) ON DECEMBER 11, 1997

Q: When did you receive communication that you are requested to produce documents about the Hudson Dog Track matter?

A: Yesterday.

But for this deposition, Interior would have successfully kept information from the House, the Senate, and the civil plaintiffs.

III. SUBPOENA REQUESTING DOCUMENTS: DECEMBER 12, 1997
DUE DATE FOR COMPLIANCE: JANUARY 2, 1998

Productions Received:

1. December 17, 1997

2. January 2, 1998

3. January 13, 1998

4. January 16, 1998 – Friday Night

5. January 17, 1998 – Saturday Morning

Mr. BURTON. Does anyone else seek recognition for this panel?

Mr. Skibine, we thank you for being here and we appreciate your cooperation. Thank you.

Mr. SKIBINE. Thank you very much. Mr. Chairman.

Mr. BURTON. The next panel I invite to come to the table, Robin Jaeger, Michael Anderson and Tom Hartman. We will wait 5 minutes so that everybody gets organized. Will the reporters please let Mr. Skibine and his friends leave the table before they start talking to them?

[Brief Recess.]

Mr. BURTON. Gentlemen, if you are prepared, we will have you stand and be sworn. Raise your right hands.

[Witnesses sworn.]

Mr. BURTON. On behalf of the committee, I welcome you here today. You are recognized, each and every one of you, to make an opening statement. We would like for you, if you could, to limit it to 5 minutes. If it is longer than that, we will take the remainder for the record. We will submit it for the record. Who would like to start? Mr. Anderson? You are recognized for 5 minutes.

STATEMENTS OF MICHAEL ANDERSON, DEPUTY ASSISTANT SECRETARY, BUREAU OF INDIAN AFFAIRS; THOMAS H. HARTMAN, FINANCIAL ANALYST, INDIAN GAMING MANAGEMENT STAFF; AND ROBERT R. JAEGER, SUPERINTENDENT, BUREAU OF INDIAN AFFAIRS, GREAT LAKES AGENCY

Mr. ANDERSON. Thank you, Mr. Chairman.

Good afternoon, Mr. Chairman and members of the House Government Reform and Oversight Committee. My name is Michael Anderson and I serve as Deputy Assistant Secretary for Indian Affairs at the U.S. Department of the Interior.

I was born in Okmulgee, OK, in 1958 and was a resident of Oklahoma City and Norman, OK, until 1980. I am a tribal member of the Muskogee Nation. I received a degree in political science from the University of Oklahoma in 1980, and a law degree from Georgetown University Law Center in 1984. I am a member of the District of Columbia Bar. From 1984 to 1992, I practiced law in Colorado and the District of Columbia.

In 1989, I took a 1-year leave of absence from the law firm of McKenna & Cuneo to serve as associate counsel and later general counsel of the U.S. Senate Special Committee on Investigations, Senate Committee on Indian Affairs, which at that time was examining allegations of waste, fraud, and abuse in the Bush Interior Department.

I left McKenna & Cuneo in 1992 to become executive director of the National Congress of American Indians. I left NCAI in 1993, when I was appointed by the Clinton administration to serve as Associate Solicitor for Indian Affairs. I served in this position until April 1995, when I became Deputy Assistant Secretary for Indian Affairs.

I am here to present testimony on the Department's decision to deny the application of three Indian tribes in Wisconsin to take land into trust for gaming purposes off of their reservations. Accompanying me is Timothy Elliott, Deputy Associate Solicitor for General Law at the Department of the Interior.

I am pleased to present facts on this matter, particularly in light of the widely misreported information on the Department's processes in reaching its decision, which in my view was correct and appropriate and without any improper political influence.

As an attorney and as a former general counsel of the Senate Investigations Committee, I am acutely aware of the need to protect Government decisions from improper activities. I respect and honor the role of Congress in investigating allegations of improper activities and only ask in return that congressional committees accord fairness to those from whom they seek information.

The subject of this hearing is a letter I signed as Deputy Assistant Secretary on July 14, 1995, to the tribal chairs of the Red Cliff Band of Lake Superior Chippewas, Lac Courte Oreilles Band of Lake Superior Chippewas, and the Sokaogan Chippewa community, respectively. That letter contained the statutory and policy bases for denying the joint application of these three Chippewa tribes to take land into trust for gaming off of their reservations.

I have already testified in deposition before the Senate Governmental Affairs Committee and this committee and wish to re-emphasize here that I have no knowledge of any improper political influence, or knowledge of even rumors or suggestions that campaign contributions played any role in this decision. I never had a conversation with Secretary Babbitt about the Hudson matter, nor did anyone present to me his views on how the Hudson matter should be decided. The then-director of the Indian Gaming Management Staff, George Skibine, who has just testified, supported denial of the application. I know of no staff in Washington, DC, who believed the application should be granted outright.

The application, if granted, would have caused detriment to the surrounding community, including the city of Hudson, WI, the town of Troy, WI, and the St. Croix Indian tribe. Moreover, it did not adequately address the environmental impacts to the St. Croix Scenic Riverway.

In closing, I want to add that I am greatly concerned that these hearings without being kept in proper context may lead to the perception that American Indian and Alaska Native governments and individuals should not participate in the political process because their support for Federal and congressional candidates may somehow taint executive branch decisions affecting them. Members of the committee, that would be a tragedy.

As a member of the Muskogee Creek Nation, I know American Indian and Alaska Native veterans have honorably served America in combat as well as peacetime. Their efforts to defend the American way of life include the right of American Indians to vote, and like all other citizens, to make financial contributions to those candidates that they support. No one doubts that this must be done in a legal and ethical way, but neither should a double standard be applied that would prevent American Indians from participating in the political process. I look forward to answering any questions you have on this matter. Thank you.

[The prepared statement of Mr. Anderson follows:]

Statement of Michael Anderson, Deputy Assistant Secretary for Indian Affairs, before the House Committee on Government Reform and Oversight on the Department of the Interior's Decision to deny the application of three Indian tribes in Wisconsin to take off-reservation land in trust for gaming purposes.

January 22, 1998

Good Afternoon Mr. Chairman and members of the House Government Reform and Oversight Committee. My name is Michael Anderson and I serve as Deputy Assistant Secretary for Indian Affairs at the U.S. Department of the Interior. I was born in Okmulgee, Oklahoma in 1958 and was a resident of Oklahoma City and Norman, Oklahoma until 1980. I am a tribal member of the Muskogee Nation. I received a degree in political science from the University of Oklahoma in 1980 and a law degree from Georgetown University Law Center in 1984. I am a member of the District of Columbia Bar and Colorado (inactive). From 1984 to 1992, I practiced law in Colorado and the District of Columbia. In 1990, I took a one year leave of absence from the law firm McKenna & Cuneo to serve as Associate Counsel and later General Counsel of the U.S. Senate Special Committee on Investigations, Senate Committee on Indian Affairs. I left McKenna & Cuneo in 1992 to become Executive Director of the National Congress of American Indians. I left NCAI in 1993 when I was appointed by the Clinton Administration to serve as Associate Solicitor for Indian Affairs. I served in this position until April 1995 when I became Deputy Assistant Secretary for Indian Affairs.

I am here to present testimony on the Department's decision to deny the application of three Indian tribes in Wisconsin to take land into trust for gaming purposes off of their reservations. Accompanying me is Timothy Elliott, Deputy Associate Solicitor for General Law at the Department of the Interior.

I am pleased to present facts on this matter particularly in light of widely reported misinformation on the Department's processes in reaching its decision, which was in my view correct and appropriate and without any improper political influence. As an attorney, and as a former General Counsel to the U.S. Senate Special Investigations Committee, I am acutely aware of the need to protect government decisions from improper activities. I respect and honor the role of Congress in investigating allegations of improper activities and only ask in return that Congressional committees accord fairness to those from whom they seek information.

The subject of this hearing is a letter I signed as Deputy Assistant Secretary on July 14, 1995, to the tribal chairs of the Red Cliff Band of Lake Superior Chippewas, Lac Courte Oreilles Band of Lake Superior Chippewas and the Sokaogan Chippewa Community, respectively. That letter contained the statutory and policy bases for denying the joint application of these three Chippewas tribes to take land into trust for gaming off their reservations.

I have already testified in deposition before the Senate Government Affairs Committee and this Committee, and wish to reemphasize here, that I have no knowledge of any improper political influence, or knowledge of even rumors or suggestions that campaign contributions played any

role in this decision. I never had a conversation with Secretary Babbitt about the Hudson matter nor did anyone present to me his views on how the Hudson matter should be decided.

The then Director of the Indian Gaming Management staff, George Skibine, a career civil servant, supported denial of the application and I know of no staff in Washington D.C., who believed the application should be granted outright. The application if granted would have caused detriment to the surrounding community, including the City of Hudson, Wisconsin, the town of Troy, Wisconsin and the St. Croix Indian Tribe. Moreover, it did not adequately address environmental impacts to the St. Croix Scenic Riverway.

In closing, I want to add that I am greatly concerned that these hearings, without being kept in proper context, may lead to the perception that American Indian and Alaska Native governments and individuals should not participate in the political process because their support for Federal and Congressional candidates may somehow "taint" Executive Branch decisions affecting them. Members of the Committee, that would be a tragedy. As a member of the Muskogee Creek Nation, I know American Indian and Alaska Native veterans have honorably served America in combat as well as peacetime. Their efforts to defend the American way of life include the right of American Indians to vote and, like all other citizens, to make financial contributions to those candidates they support. No one doubts that this must be done in a legal and ethical way, but neither should a double standard be applied that would prevent American Indians from participating in the political process.

I look forward to answering any questions you have on this matter.

Mr. HARTMAN. Good afternoon, Mr. Chairman, and members of the House Government Reform and Oversight Committee. My name is Tom Hartman and I am a financial analyst on the Indian Gaming Management Staff of the Bureau of Indian Affairs of the Department of the Interior. I am currently the Acting Director of the office, pending the selection of a new Director. I am a career civil servant and have worked at the Department since September 1994, over 3 years. Accompanying me is Mr. Tim Elliott, Deputy Associate Solicitor for General Law at the Department of the Interior.

I am here to provide testimony on my role in reviewing the application of three Chippewa tribes to acquire the St. Croix Meadows Greyhound Racetrack in trust for use in gaming. As an opening statement, I would like to correct a persistent misstatement about my analysis of the record of the application that has bothered me a great deal. I have been widely quoted in the press as recommending the approval of the application. As a professional, I think it is important to remain impartial about the final outcome of any review I perform, even as I make critical observations, some favorable, some unfavorable, on the facts under review.

My recommendation to the office Director in a June 8, 1995, draft memorandum was to complete the other half of a two-part determination, the consideration of whether the application was in the best interest of the tribe and its members. I did not recommend approval of the application and would not have done so until the entire review had been completed. After a complete review, I would have recommended approval only if I believed the facts supported such a recommendation.

The implication that I would make a recommendation before a complete and thorough review of all the factors in a determination impugns my professionalism and impartiality. As a member of the Cherokee Nation of Oklahoma, I am keenly aware of the important role the Bureau of Indian Affairs plays in tribal governments and in individual Indian lives. I believe that I can best support strong tribal governments by professionally performing my job in a manner that conforms to Federal law, and preserves the integrity of the process at the Bureau. I believe I have done so in the matter now before this committee and will continue to do so in the future. I hope my answers during this hearing will add to your understanding of the review of the application of the three affiliated tribes.

[The prepared statement of Mr. Hartman follows:]

U.S. House of Representatives
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

A January 22 Hearing On:
The Department of the Interior's Denial of a Fee-to-Trust Application
in Hudson, Wisconsin

Written Statement of Thomas H. Hartman
Department of the Interior
Bureau of Indian Affairs
Financial Analyst, Indian Gaming Management Staff
Washington, DC

Good afternoon Mr. Chairman and members of the House Government Reform and Oversight Committee. My name is Tom Hartman and I am the Financial Analyst on the Indian Gaming Management Staff of the Bureau of Indian Affairs of the Department of the Interior. I am currently the Acting Director of the office pending the selection of a new director. I am a career civil servant and have worked at the Department since September, 1994, over three years. Accompanying me is Tim Elliott, Deputy Associate Solicitor for General Law at the Department of the Interior. I am here to provide testimony on my role in reviewing the application of three Chippewa Indian tribes to acquire the St. Croix Meadows greyhound racing track in trust for use in gaming.

As an opening statement, I would like to correct a persistent misstatement about my analysis of the record of the application that has bothered me a great deal. I have been widely quoted in the press as recommending approval of the application. As a professional, I think it is important to remain impartial about the final outcome of any review I perform, even as I make critical observations, some favorable and some unfavorable, on the facts under review.

My recommendation to the office Director in a June 8, 1995 draft memorandum was to complete the other half of a two-part determination, the consideration of whether the application was in the best interest of the tribe. I did not recommend approval of the application, and would not have done so until the entire review had been completed. After a complete review, I would have recommended approval only if I believed the facts supported such a recommendation. The implication that I would make a recommendation before a complete and thorough review of all factors in a determination, impugns my professionalism and impartiality.

As a member of the Cherokee Nation of Oklahoma, I am keenly aware of the important role the Bureau of Indian Affairs plays in tribal governments and in individual Indian lives. I believe that I can best support strong tribal governments by professionally performing my job in a manner that conforms to Federal law, and preserves the integrity of the process at the Bureau. I believe I have done so in the matter now before this Committee, and will continue to do so in the future.

I hope my answers during this hearing will add to your understanding of the review of the application of the three affiliated tribes.

Mr. JAEGER. Good afternoon, Mr. Chairman, members of the committee. My name is Robin Jaeger. I'm the Superintendent for the Bureau of Indian Affairs, Great Lakes Agency located in Ashland, WI. On October 12, 1993, three Wisconsin Indian tribes submitted a request to the Bureau of Indian Affairs Minneapolis area office to take land known as the St. Croix Meadows Greyhound Racing Park located in Hudson, WI, for Class III gaming purposes. The three tribes were the Red Cliff Band of Lake Superior Chippewa Indians, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin and the Sokaogon Chippewa community of Wisconsin.

By letter dated October 13, 1993, to the tribes, the acting Minneapolis area Director acknowledged receipt of their request for approval of off-reservation land for gaming purposes. The tribes were advised of the requirements of section 20 of the Indian Gaming Regulatory Act, which required the Secretary of the Interior to consult with nearby tribes and the Governor of Wisconsin.

The Secretary was required to determine if gaming was in the best interest of the tribes and not a detriment to the surrounding community. The letter concluded by stating that the Minneapolis area office would begin the consultation process with other tribes.

In a followup letter on December 30, 1993, the area Director wrote to the tribes stating that prior to taking off-reservation land into trust for gaming purposes, the Secretary must complete the two-part determination required by the Indian Gaming Regulatory Act. Part 1, will a gaming establishment on newly acquired land be in the best interest of the tribes? Part 2, will a gaming establishment on newly acquired land be detrimental to the surrounding community?

The area Director requested that the tribes furnish additional information, including findings and supporting data on a variety of questions and issues. The tribes were to address whether the proposed gaming establishment would be in the best interest of the tribes, and if it would be detrimental to the surrounding community. The tribes were also advised that the Minneapolis area office would be responsible for contacting the appropriate State and local officials, including officials of other nearby Indian tribes, for their opinions on the same questions and issues. The responses would be used by the area Director to develop findings of fact and a recommendation to the Assistant Secretary Indian Affairs of the Department of the Interior.

As the Superintendent of the Bureau of Indian Affairs Great Lakes Agency, I was formally requested by the area Director on June 3, 1994, to begin the environmental compliance review for the trust acquisition of and the addition of Class III gaming to the existing St. Croix Meadows Greyhound Racing Park. It was my understanding that the Minneapolis area office would continue to be the lead office for all facets called for by the two-part determination. The agency's only role would be to determine compliance with the National Historic Preservation Act and the National Environmental Policy Act.

Following this request, the agency complied with Secretarial Order 3127, which is a hazardous materials inspection of the property. We also coordinated with the State historic preservation offi-

cer to determine compliance with the requirements of the National Historic Preservation Act. And to comply with NEPA, the agency staff reviewed a comprehensive environmental assessment and supporting documents.

We placed a public notice of availability for the environmental documents and allowed a 30-day public review so that all interested parties could comment. When the comment period ended, the agency was to prepare either a finding of no significant impact, or recommend the completion of an environmental impact statement. At that point, it was the responsibility of the Minneapolis area Director to make the decision either to accept the FONSI or to request an environmental impact statement.

The agency performed the actions necessary to consider the environmental consequences of the proposed project. Our review indicated there would be no significant negative environmental impact caused by adding Class III gaming to a facility already engaged in a gaming operation. This review resulted in the issuance of a FONSI, dated September 14, 1994. The FONSI was submitted to the Minneapolis area office and was included as part of the area Director's review and analysis of the tribes' application.

The area Director's finding and recommendation concerning the application was subsequently sent on for consideration to the Assistant Secretary Indian Affairs on November 15, 1994. In April 1995, the area Director sent to the Assistant Secretary a recommendation to take the land into trust under 25 CFR, part 151 land acquisitions.

Generally, the agency, the Great Lakes agency, is not involved with the two-part determination process on an application to take off-reservation land into trust for gaming purposes. That process is the responsibility of the area Director. In the case of the tribes's Hudson application, the agency was asked to share a portion of the area office's workload and conduct the environmental compliance review. This was because agency staff were familiar with the review process due to their routine involvement with a variety of nongaming projects which required NEPA compliance also. It was felt that this assistance would enable the Minneapolis area office to complete the overall review of the politics in a more timely manner. Thank you, Mr. Chairman.

[The prepared statement of Mr. Jaeger follows:]

U. S. House of Representatives
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

A Hearing On:
The Department of the Interior's denial of a Fee-to-Trust application in Hudson, Wisconsin

Written Statement of Robert R. Jaeger
Department of the Interior
Bureau of Indian Affairs
Superintendent, Great Lakes Agency
Ashland, Wisconsin

On October 12, 1993, three Wisconsin Indian Tribes submitted a request to the Bureau of Indian Affair's (BIA) Minneapolis Area Office (MAO) to take land known as the St. Croix Meadows Greyhound Racing Park located in Hudson, Wisconsin, into trust for Class III Gaming purposes. The three Tribes were the Red Cliff Band of Lake Superior Chippewa Indians, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Sokaogon Chippewa Community of Wisconsin (collectively referred to as the "Tribes").

By letter dated October 13, 1993, to the Tribes, the Acting Minneapolis Area Director (Area Director) acknowledged receipt of their request for approval of off-reservation land for gaming purposes. The Tribes were advised of the requirements of Section 20 of the Indian Gaming Regulatory Act (IGRA) P.L. 100-497 which required the Secretary of the Interior (Secretary) to consult with nearby tribes and the Governor of Wisconsin. The Secretary was required to determine if gaming was in the best interest to the Tribes and not a detriment to the surrounding community. The letter concluded by stating that the MAO would begin the consultation process with other tribes.

In a follow up letter on December 30, 1993, the Area Director wrote to the Tribes stating that prior to taking off-reservation fee land into trust for gaming purposes, the Secretary must complete a two part determination required in the IGRA. Part 1- Will a gaming establishment on newly acquired land be in the best interest of the three Tribes? Part 2- Will a gaming establishment on the newly acquired land be detrimental to the surrounding community?

The Area Director requested that the Tribes furnish additional information including findings and supporting data on a variety of questions and issues. The Tribes were to address whether the proposed gaming establishment would be in the best interest of the Tribes and if it would be detrimental to the surrounding community. The Tribes were also advised that the MAO would be responsible for contacting the appropriate state and local officials, including officials of other nearby Indian tribes, for their opinions on the same questions and issues. The responses would be used by the Area Director to develop findings of fact and a recommendation to the Assistant Secretary-

Indian Affairs of the Department of the Interior.

As the Superintendent of the BIA's Great Lakes Agency, (Agency) I was formally requested by the Area Director on June 3, 1994, to begin the environmental compliance review for the trust acquisition of, and addition of Class III Gaming, to the existing St. Croix Meadows Greyhound Racing Park. It was my understanding that the MAO would continue to be the lead office for all facets called for by the two part determination required by IGRA. The Agency's only role would be to determine compliance with the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA).

Following this request, the Agency complied with Secretarial Order 3127 (hazardous materials inspection of the property). We also coordinated with the State Historic Preservation Officer to determine compliance with the requirements of the NHPA. To comply with NEPA, Agency staff reviewed a comprehensive environmental assessment and supporting documents. We placed a Public Notice of Availability for the environmental documents and allowed a 30 day public review so that all interested parties could comment. When the comment period ended, the Agency was to prepare either a Finding Of No Significant Impact (FONSI) or recommend the completion of an Environmental Impact Statement (EIS). At that point, it was the responsibility of the Area Director to make the decision either to accept the FONSI or to request an EIS.

The Agency performed the actions necessary to consider the environmental consequences of the proposed project. Our review indicated there would be no significant negative environmental impacts caused by adding Class III Gaming to a facility already engaged in a gaming operation. This review resulted in the issuance of a FONSI dated September 14, 1994. The FONSI was submitted to the MAO and was included as a part of the Area Director's review and analysis of the Tribes' application. The Area Director's finding and recommendation concerning the application was subsequently sent for consideration to the Assistant Secretary-Indian Affairs on November 15, 1994. In April 1995, the Area Director sent to the Assistant Secretary a recommendation to take the land into trust under 25 CFR Part 151 Land Acquistions.

Generally, the Agency is not involved with the two part determination process on an application to take off-reservation land into trust for gaming purposes. That process is the responsibility of the Area Director. In the case of the Tribes' Hudson application, the Agency was asked to share a portion of the MAO's workload and conduct the environmental compliance review. This was because Agency staff were familiar with the review process due to their routine involvement with a variety of non gaming projects which required NEPA compliance. It was felt that this assistance would enable the MAO to complete the overall review of the application in a more timely manner.

Mr. BURTON. Thank you, we will yield to our counsel for 30 minutes and I will take a brief part of that.

Mr. Jaeger, am I pronouncing your name right?

Mr. JAEGER. Jaeger.

Mr. BURTON. Pardon me. Jaeger. It is my understanding from your testimony that they didn't see any environmental problems because you already had a dog track there; is that correct?

Mr. JAEGER. That's correct. As far as my office is concerned.

Mr. BURTON. As far as your office is concerned. And on up the chain they didn't find any problems from an environmental standpoint; is that correct?

Mr. JAEGER. I believe there is a mention of some concern in Mr. Anderson's letter, his decision letter.

Mr. BURTON. Mr. Anderson mentioned some concerns about the environmental problems?

Mr. JAEGER. Relating to the St. Croix Scenic Riverway that was part of the——

Mr. BURTON. But your office found no problems?

Mr. JAEGER. That's correct.

Mr. BURTON. Mr. Anderson, what problems did you find?

Mr. ANDERSON. The major effect that we found was the environmental assessment didn't measure the impact to the St. Croix National Scenic Riverway, which is a half mile from the casino. That information came from the Indian Gaming Management Staff and I believe in the record is a memorandum from Ned Slagle, who is the environmental protection specialist in that office who made that conclusion. If I could cite just one sentence of his——

Mr. BURTON. Sure.

Mr. ANDERSON. He says, "The fact that the nearby riverway has received a special designation was not revealed in the environmental document which had been submitted in connection with other documents in support of the proposed casino."

So he basically found that that had not been identified as a problem.

Mr. BURTON. I guess you have the environmental experts at the local level saying that it met the criterion that they thought it should. And then when it went up to the level that you were talking about it was turned down, but you already had a dog track there with a big parking lot with a lot of people coming in and out. They already had a gambling facility there. What is the difference between the environmental impact of a dog track with a big parking lot and a casino with a big parking lot? You still have a lot of people going in and out?

Mr. ANDERSON. The information that was reviewed at the office was, I think, from 1988. So they measured the impacts of the casino, or actually the dog track at that point. But this casino was going to lead to a lot more traffic, maybe 4,000 or 5,000 cars per day in the area. The volume alone would be a different impact. This, as you know, was a failing dog track, so attendance was low and this new impact would cause much greater environmental concern.

Mr. BURTON. But it had been approved at the lower level.

Mr. ANDERSON. The recommendation had been, and the FONSI had been prepared at the local level. That's correct.

Mr. BURTON. It was reversed at an upper level.

Mr. ANDERSON. Yes, frequently expertise, whether it's in the financial area or the environmental area, is not as strong at the local levels as it is in Washington. That's why Secretary Lujan put forward his policy that it be reviewed by the Indian Gaming Management Staff in Washington, particularly where they are used to reviewing other applications that came forward.

Mr. BURTON. It's interesting to me that at the lower level, the gambling casino project appeared to be approved and on its way. And at the lower level the environmental concerns didn't seem to be a problem. But as they moved up the chain, all kinds of problems started occurring. And that just concerns me. I'm making an observation. I'm not asking a question.

Let me ask you another question that nobody has asked so far. You had a gambling facility there. There was a gambling facility there, and everybody keeps talking about the impact on the community who didn't want gambling. But they had gambling. The gambling was already there with the dog track.

Now, understandably the casino would draw more people there. There would be more traffic, jobs, and more money. But the fact is, if the gambling was a concern, they already had it. Did anybody ever ask that question?

Mr. ANDERSON. Sure, it was reviewed extensively. The increased traffic is very significant in finding local detriment to a community. So traffic, which you mentioned would be increased, is certainly a reason that we would look at assessing the evidence for detriment. So a failing dog track versus something that would lead to mega attendance from all over the various counties is a true——

Mr. BURTON. Mr. Anderson, we had the people here yesterday who were from Hudson. They, to my knowledge, didn't mention anything about the traffic problems. They were concerned about the moral problems and the gambling problems and the crime problems that were going to be created by having a gambling casino there. I don't remember anybody saying anything about infrastructure problems or about——

Mr. BARRETT. Mr. Chairman, if I may. We only had the county supervisors. The other individuals that Mr. Lantos read I believe did talk about her husband driving past there. So maybe we could check that. But we only had one person testified.

Mr. ANDERSON. Well, actually the resolutions and questions and answers from the community itself discussed traffic problems, wastewater treatment problems, the fact that the environmental issues——

Mr. BURTON. Let's address that. Did not the tribes in question negotiate with the cities about giving funds from the enterprise to the city in lieu of property taxes so that there would be enough money to take care of the additional infrastructure and other problems such as sewage and so forth?

Mr. ANDERSON. Yes, a year prior to, I believe it was the spring of 1994, the city and the tribe had basically entered an agreement for offset of at least costs that the city would incur. That was while the city—the council supported the application. The year later when the council reversed itself and decided to oppose this application it was a real question as to whether that agreement was bind-

ing or not. The city attorney looked at that issue. But notwithstanding that, the council still opposed it. There was a real question as to whether that was void or not or whether that would be challenged.

Mr. BURTON. I know that the political issue is a muddy one because there was a referendum that passed very slightly 52½ to 47½ or 51½, something like that. And then the council was 4 to 2 the other way and the mayor was recalled.

Mr. ANDERSON. It was not that muddy to us.

Mr. BURTON. It was not that muddy to you?

Mr. ANDERSON. No.

Mr. BURTON. But at lower levels it had been approved hadn't it? Recommended for approval?

Mr. ANDERSON. At the BIA? Yes, certainly——

Mr. BURTON. And at the lower levels the environmental people saw no problem.

Mr. ANDERSON. That's correct. As Mr. Slagle said, though, those environmental problems and assessment of St. Croix were not addressed.

Mr. BURTON. There was no political reason for that? There was no political pressure whatsoever?

Mr. ANDERSON. Right. Mr. Slagle is a career professional who does these environmental assessments regularly.

Mr. BURTON. The gentleman we just had before us was a career professional as well.

Mr. ANDERSON. He was at the local level, though, and that was at the superintendent level.

Mr. BURTON. Counsel?

Mr. WILSON. Mr. Hartman and Mr. Jaeger, we again meet under less than optimal circumstances. Hopefully, this afternoon will not be terribly long.

Mr. Anderson, I recognize you were deposed before the committee last week and again thank you very much for being here.

I'll try to shorten my questions as much as possible by trying to get to one of the central points here.

Mr. Anderson, my understanding is that this proposal to take land into trust was not an adversarial process, was it?

Mr. ANDERSON. I think it was a contentious process. It wasn't an adjudicatory process. But there are certainly strong feelings on both sides of the issue.

Mr. WILSON. Certainly amongst supporters and opponents, but between the applicants and the Department of the Interior, was this designed to be an adversarial process?

Mr. ANDERSON. No, this was designed to be a cooperative process.

Mr. WILSON. Where, in the record, can we look to find a communication with the applicants telling them that if they didn't cure a certain problem by a certain time, the application would be denied?

Mr. ANDERSON. The central point in consultations at the end appeared to me to be from, as Mr. Skibine testified, from Mr. Moody, Mr. Havenick, Mr. Eckstein. That is where I would expect—and don't have knowledge because I wasn't in those meetings, where the consultation process would have occurred and where clearly would have been expressed you've got to get the local support of

the community. It would be naive for the applicant tribes to assume that they didn't need local support of the community. They clearly needed that and they also needed to show there was not a finding of detriment.

Mr. WILSON. But, Mr. Anderson, you come here today as the ultimate decisionmaker. You testified that you signed the July 14th letter that rejected the application. And what we are really trying to get to here is some tangible representation or some tangible evidence of the Department of the Interior consulting in a meaningful fashion with the applicants and telling them there is a serious problem and if you don't make an attempt to cure this particular problem, then we will not be able to accept your application. Is there such a communication in the record?

Mr. ANDERSON. I believe the meetings would be the substance of the communication. I would accept the statement that there could always be more consultation or better consultation. Clearly, in any of our processes there can always be more done. But I can't accept that the applicant tribes didn't know they needed the local support of the community, particularly as to the evidence of detriment and to minimize that, when that was in the standard. That was in the standard that was passed in IGRA.

Mr. WILSON. I recognize your contention that the support of the local community must be given. I wanted to return to something you said in your opening statement. You said if the application were to have been approved, it would have caused detriment to Hudson. What detriment are you referring to?

Mr. ANDERSON. The detriment is contained in the letter that I signed on July 14th and it is particularly geared to the potential growth in traffic, congestion, and the adverse affect on the community's future residential, industrial and commercial development plans. That was the core of the problem.

Mr. WILSON. Are those problems that can be cured?

Mr. ANDERSON. They cannot be cured, but they can be paid for. I mean traffic——

Mr. WILSON. I'm noticing a distinction there. You are telling me they cannot be cured, but they can be paid for.

Mr. ANDERSON. Right. Just as an example, traffic congestion. You can't cure that because there is going to be traffic coming into the community. And can the offsets be paid for where there is more police? Yes.

Mr. BURTON. I guess the point that we would like to illuminate is that did you discuss with the tribes in question who were applying for the ability to build the casino, did you talk to them about these problems before denial?

Mr. ANDERSON. No, I didn't. The Department was in communication, but as an individual, I did not.

Mr. BURTON. Were there any meetings or any correspondence that was sent? Was there correspondence enumerating the problems that had to be met?

Mr. ANDERSON. I would have to examine the record. I believe that——

Mr. BURTON. You signed the final denial. Did you not check that out?

Mr. ANDERSON. I relied on the career staff to provide a record for the decision. I was briefed on the record, but I don't know the details.

Mr. BURTON. Who in the career staff made that recommendation to you that you go ahead and sign it, because you said you didn't check everything out?

Mr. ANDERSON. We had meetings and I said I was briefed on the documents and the issues involved.

Mr. BURTON. But from what I've been able to discern at these meetings, the tribes that were applying for the license and to put the land in trust, they were not notified in writing of the problems. And the tribes that opposed it, the very wealthy tribes, had a meeting with the Department officials including their lobbyists before this decision was made, and they were not notified in writing about the problems until after the decision was made.

Mr. ANDERSON. Oh, that's not correct. They were notified the consultation period had been extended. They were notified late, but they were notified that information would be coming in. And they also had——

Mr. BURTON. Was this after the meeting with the larger tribes, the tribes that had the most to gain by stopping them financially?

Mr. ANDERSON. Yes, as I understand the record, after the meeting with the tribes who were opposing the application, and there was time allowed to have more commentary on the application, they were notified. The applicant tribes were notified 6 weeks later. So they did know there was new information being considered.

Mr. BURTON. Is it common practice to your knowledge when there is a difference of opinion on whether or not there should be a casino that the tribes who are trying to get the license and get the land in trust like the ones that we are talking about, that they not be notified of a meeting that is going to take place involving the opponents, particularly the other tribes that were making a lot of money and didn't want the competition? I mean it seems to me kind of unfair that they weren't even notified about that meeting until after it took place.

Mr. ANDERSON. Well, typically—typically, in a consultation process—and we have a government-to-government relationship with each tribe—we don't invite or sometimes even notify other tribes that we're having meetings. We don't know what the meetings are about.

In this particular case, I believe the Minnesota delegation arranged the meeting. At least that's what I understand from the record.

Mr. BURTON. Mr. O'Connor, who I——

Mr. ANDERSON. Well, I think the invitation was actually held by Congress.

Mr. BURTON. I understand, but, it just seems strange.

Go ahead, Counsel.

Mr. WILSON. Obviously, we can speak about problems right now for quite a long period of time, but they are not germane to the application process unless they are communicated to the applicants.

I would like to try to cut through some of the sophistry here and deal directly with one of the things you mentioned in your opening statement. You talked about the environmental assessment not

being adequate. The question, simply put then, is, if the environmental assessment wasn't adequate, why didn't you send your career employees back to adequately complete the environmental assessment?

Mr. ANDERSON. Well, that's a fair question, and perhaps that should have been done.

Mr. WILSON. Well, no——

Mr. ANDERSON. I think, given the other compelling reasons for denial of the application—which were the congestion, the local community's opposition—there was certainly time, even after the decision was made and denied, for them to come forward and to cure those problems or at least to make the attempt to cure those problems.

Mr. WILSON. There is a shell game going on here and I'm going to be going at a moving target all afternoon, but you mentioned one of the reasons for denying the application as being an environmental assessment not being adequate. For us to try to understand this process, it is very important for us to understand why, if you are going to identify that as a fatal problem with this application, that you wouldn't simply go back and do—that is essentially your part of the work; correct?

Mr. ANDERSON. That was just one of the many fatal problems with this application.

Mr. WILSON. Well, again you are defining them as fatal problems now, but it goes back to the beginning, when we were talking about whether this was an adversarial process. If it was a cooperative process between the Department of the Interior and Indian tribes, with the Interior and the tribes working for presumably a common goal, then common fairness suggests that you would at least have gone back and said, if you can't fix problem X by date Y, we will not be able to cure or to approve your application.

Let me just ask, was there not information on the record that indicated to the applicants that they were proceeding in the right direction with their applications?

Mr. ANDERSON. I believe the indication clearly from the area level was that it was moving along just fine.

Mr. WILSON. Is it correct to say there was a November 15, 1994, communication from the area office in Minneapolis that indicated that the application was not deficient?

Mr. ANDERSON. That's correct.

Mr. WILSON. Is it correct to say that on April 30, 1995, there was another communication from the area office indicating that the application was not deficient?

Mr. ANDERSON. I'm not familiar with the April 30th. By that time, though, the central office in the Indian Gaming Management Staff, pursuant to the policy that Secretary Lujan had adopted, assumed jurisdiction of this area, just as they have for all gaming acquisitions off the reservation.

So I'm not sure how current the area office's information was. Certainly by that time the information about the council's opposition, the town's opposition, is something that is not reflected in that later document. So I'm not sure how up-to-date they were at that point.

Mr. WILSON. I understand.

Mr. ELLIOTT. Counsel, when you say April 30th communication from the area office, are you referring to an April 20th communication?

Mr. WILSON. I stand corrected.

I don't want to spend too much time shooting at moving targets here, but one of the other things you mentioned was the traffic. And you mentioned that you were working on information obtained in 1988; is that correct?

Mr. ANDERSON. As I understand, the area office and the superintendent's office were looking at environmental issues from 1988, when they made their FONSI determination on the dog track at that point.

Mr. WILSON. Mr. Anderson, do you know when the dog track was built?

Mr. ANDERSON. Well, the dog track was built in 1990, but they had to do an environmental assessment in advance of that. So I believe 1988 was the time they actually did the assessment.

Mr. WILSON. And how many cars was the dog track built to accommodate within its traffic patterns?

Mr. ANDERSON. I believe—I don't know the answer to that. I just know the dog track at that time was failing in 1994. So I'm not sure of the scope.

Mr. WILSON. And in the materials you had submitted to you, how many cars was it anticipated that would go into the casino?

Mr. ANDERSON. The figures I have seen are around 4,000 a day, and that's probably an initial opening, and when they build a market, there would be even more.

Mr. WILSON. Which is less than half the number the dog track was built to accommodate; correct?

Mr. ANDERSON. I'm not sure of the facts of how much they accommodated.

Mr. WILSON. Well, you can understand our problems when you give us reasons for the denial of the application and then you're not certain of the points which underlie——

Mr. ANDERSON. I can certainly provide that for the record.

Mr. BURTON. This is very significant, because I would have presumed that you would have sent a letter enumerating all the problems, environmental, traffic and everything else, to the applicants so that they could see if they could solve those problems. That wasn't done in a timely fashion.

And the dog track would accommodate 8,000 cars at the time it was built in 1990. There was no environmental problem. The people at the local level didn't see any environmental problem. Now you are talking about a casino that is going to usually have half that number of cars there, not 8,000 but 4,000, and you find an environmental problem. The amount of traffic is cut in half, the amount of people that you anticipated was going to be gambling there at the dog track or the casino was cut in half, in all probability, and yet now you see an environmental problem that wasn't there when it was double that number.

I don't understand that. Can you explain that?

Mr. ANDERSON. Well, the town certainly saw an environmental problem and that was communicated to us. Moreover, they cited other reasons, like a wastewater facility that was closed, which

would cause more problems in that environmental—in that area as well. They may have to construct a new facility to accommodate the casino.

Mr. BURTON. You mean the local people who were examining this from an environmental standpoint would know anything about that?

Mr. ANDERSON. They provided us with the information that they had a problem with the congestion and the wastewater facilities.

Mr. BURTON. The local environmental people?

Mr. ANDERSON. No; the local towns did.

Mr. BURTON. But the local environmental people didn't see any problem?

Mr. ANDERSON. Yes, they did. The Izaak Walton League sent us a letter.

Mr. BURTON. No, no, no, not the Izaak Walton people; I am talking about the people that made the recommendations.

Mr. ANDERSON. You mean the local people here?

Mr. BURTON. Right.

Mr. ANDERSON. No, they didn't. They reach their final——

Mr. BURTON. And they are supposed to have some environmental common sense, because they work for the Government and they work in the area of the environment.

Mr. ANDERSON. Well, they're very valuable employees, and they have a lot of expertise. But they would even acknowledge—I think Mr. Jaeger would acknowledge that Washington is a place that sometimes, in other areas, has more expertise. Mr. Slagle has reviewed many of these.

Mr. BURTON. But the question is, for what reason is there more expertise?

Mr. ANDERSON. Well, you know, I have been very calm about the comments about the shell game and everything else, which I think are out of line, but to suggest that Mr. Slagle again has now joined this massive conspiracy of career people opposing that is beyond the pale. I'm referring to the counsel's comments.

Mr. BURTON. We are wondering if proper procedures were followed according to the law. And you said this was supposed to be a cooperative procedure. These people, who had made the application, weren't notified of all the problems in a timely manner. There wasn't any meeting; there wasn't any letter enumerating the problems.

Mr. ANDERSON. There were meetings, and I don't—I would just refer again to what Mr. Skibine said. I don't know the Democratic context of those meetings. I don't know if you asked Mr. Skibine about the nature of the opposition or the nature of the evidence that was needed there. I expect the problems were communicated in those meetings.

Mr. BURTON. Go ahead.

Mr. WILSON. Mr. Anderson, did Mr. Slagle ever go to Hudson, WI, to look at the environmental situation?

Mr. ANDERSON. You would have to ask Mr. Skibine, who is his staff director. I don't know whether he did or not.

Mr. WILSON. I have asked this question in depositions, and my understanding thus far is that you did not bother to send, or you did not—I won't characterize it in any way, but you did not send

anybody to Hudson to do any analysis of the environmental situation; is that correct?

Mr. ANDERSON. I'm not sure what the career staff did in terms of their examination of the site or not. I just wouldn't know the answer to that.

Mr. BURTON. Mr. Anderson, one of the things that troubles me is that you signed the letter, and the letter had the conclusions drawn, but as far as the background information and a lot of the things that are necessary to draw that conclusion, I have asked you about some documents, you said those were handled by people below you, like Mr. Skibine and so forth, that you didn't see those.

Don't you find it troubling that you were signing a letter of declination without having reviewed all the relevant material so that you could make that determination?

Mr. ANDERSON. No.

Mr. BURTON. You are the man that is held accountable. Your name is on the letter.

Mr. ANDERSON. Yes, it is, and I think in those situations one does have to invest in the Government career people and the people with expertise to make those decisions.

To give you an example, sometimes we will have people write in about their genealogy; they want to become a member of a tribe or their tribe itself should be recognized. I don't go back in those decisions and examine the genealogical records myself or examine all the evidence as submitted by historians and anthropologists. We have a career staff that looks at those issues, and I basically invest in them to give me proper advice, which I think was done in this case.

Mr. BURTON. What if the career staff was influenced by political considerations other than the normal procedures?

Mr. ANDERSON. I'm not aware of that case ever occurring.

Mr. BURTON. I know, but what if it were?

Mr. ANDERSON. Influenced by improper political influence? Clearly, their credibility——

Mr. BURTON. You would have just gone ahead and signed the letter based upon their recommendation anyhow?

Mr. ANDERSON. No, I don't think anybody—I mean, if there was evidence that someone had improperly—because of political influence or bribes or some violation of the Federal criminal law, was making a recommendation, as a public official myself, I certainly couldn't sign on to that.

Mr. BURTON. How would you know?

Mr. ANDERSON. Well, I think you have to look at the evidence they are presenting.

Mr. BURTON. But you said you were relying upon the career people. We have asked you about some questions here today that you simply didn't have the answers for. You said you relied upon Skibine and others.

Mr. ANDERSON. I have heard it both ways today now: One, don't rely on the career people; and now, that you should rely on the career people, so—I mean, I invest in them to give me proper information. Do I know whether it is—that they have been somehow improperly influenced? I don't know that in every case. I don't expect that happened here.

Mr. BURTON. You don't expect that, but you are not sure.

Mr. ANDERSON. I have a high degree of confidence in the gentlemen sitting here and elsewhere.

Mr. WILSON. Mr. Hartman, we don't want to leave you out of the mix mere. If you could, I think you have your deposition testimony here, the document marked as exhibit 346–A. And if you could just, if you would, please refer to page 37 of the deposition.

Mr. HARTMAN. I don't. Counsel may have it; I don't currently have it.

Mr. ELLIOTT. Page 346–A?

Mr. WILSON. It is exhibit 346–A.

Mr. ELLIOTT. Right.

Mr. HARTMAN. I'm sorry, which page?

Mr. WILSON. It is page No. 37. Let me just read you this, and then I will ask.

Mr. HARTMAN. I'm sorry, I go from page 36 to—oh, 37, yes.

Mr. WILSON. I'll just read. There is a question:

Do you know, under IGRA . . . if there was a policy with regard to competing tribes in the area?

And your answer was:

The only policy I was aware of, and it was articulated verbally by the Deputy Commissioner of Indian Affairs, was that economic competition was not detrimental, that we couldn't pick one tribe out over another. And even from a business standpoint, the reason you have a McDonald's on one corner and a Burger King on the other and a Wendy's on the third corner is because there are synergisms in a lot of these. So you can't—it's very difficult from an econometric standpoint, to say when you add another casino that it ruins everybody else's business. If that was the case, the second person moving into Las Vegas would have ruined it for everybody, and I think we know that is not the case.

Do you remember making that statement in the deposition?

Mr. HARTMAN. Yes.

Mr. WILSON. And did you provide advice during the decisionmaking period about the economic impact on competing tribes?

Mr. HARTMAN. I did. We had two original studies that were done for the applicant tribes. And in the spring of 1995, we received studies from the St. Croix Chippewa and the Minnesota Indian Gaming Association.

Mr. WILSON. Is it fair to say that you were not convinced that the Hudson casino would necessarily have had an adverse impact on surrounding casinos?

Mr. HARTMAN. I didn't believe there was one, no.

Mr. WILSON. And did anybody above you in the Department of the Interior decisionmaking process discuss their objections with your viewpoint?

Mr. HARTMAN. No. There was an assertion made in one of the studies, and I have forgotten if it was the MIGA study or the St. Croix study, but they pointed out that the language says "not detrimental to the surrounding community," as opposed to a standard of "not devastating to the local community," which included the nearby Indian tribes.

And we did discuss whether or not the standard was devastation or detrimental and what criteria we should use. And my recollection is that we adopted the—that we didn't say that the—a small amount of detriment from competition would be the standard, that

we were looking at something more than pure economic competition between two Indian tribes.

Mr. WILSON. But it is fair to say you were not advising those above you in the decisionmaking process that there was necessarily detriment to the surrounding Indian casinos; is that correct?

Mr. HARTMAN. Correct.

Mr. WILSON. Just one last thing. I'm coming down to the end of my time here. If you could turn to page 54 of your deposition, please. You made a statement, and I will read the statement in full.

You stated:

> In the meetings I had been in, the negatives of taking land into trust had certainly been discussed. A concept that had been tossed out was that in a Democratic administration and a Republican Governor, to ignore the local input and impose a casino on an unwilling community, and then have the Republican Governor say, well, look at those ridiculous Democrats doing this again, was not viewed as being the best position to be in.

Now, that appears to me that there was some consideration of political factor; is that correct?

Mr. HARTMAN. Yes.

Mr. WILSON. And is it correct to say that that factor is not founded either in the Indian Gaming Regulatory Act or the Indian Reorganization Act?

Mr. HARTMAN. No, I don't think that's a fair characterization, because I think the turmoil that you create with any decision you make to take land into trust, especially for gaming, is certainly a basis to be considered in exercising Secretarial discretion under part 151.

Mr. WILSON. I understand that, but that seems to be inconsistent with the statement you have made, which is that there was a concern that the Democratic administration might approve the casino and the Republican Governor, then in his legitimate veil of authority, through the statute, would reject the casino and thus there would be political points to be obtained from that.

Mr. HARTMAN. It was a concept that was the situation of the reality at the time. We did not have any kind of definitive statement from the Governor of Wisconsin that he would concur. As a matter of fact, probably the bulk of the indications we had were that the Governor would not concur in a determination. And I think it's quite valid to examine how the Federal Government then becomes regarded by a local community if the end result is imposing an Indian gaming facility on a community that is not willing to have it.

Mr. WILSON. I think, Mr. Hartman, my time is up.

Mr. BURTON. Mr. Kanjorski, I presume you will control the time on your side. You are recognized for 30 minutes.

Mr. KANJORSKI. Thank you, Mr. Chairman.

Mr. Anderson, you testified in your opening statement that you are an American Indian; is that correct?

Mr. ANDERSON. That's correct. I'm very proud of that.

Mr. KANJORSKI. And you have worked in the American Indian Movement over a number of years prior to becoming an official of the U.S. Government.

Mr. ANDERSON. Yes, but not the official American Indian Movement.

Mr. KANJORSKI. And you have been with the Government since 1993; is that correct?

Mr. ANDERSON. That's right. I have also worked for the Government on the Senate side as well.

Mr. KANJORSKI. And you, obviously, left the private law practice because of the tremendous salary boost going into the Government; is that correct?

Mr. ANDERSON. Well, that would be psychic value, I would think.

Mr. KANJORSKI. And as we all know, particularly those Members of Congress, that the 500 or 1,000 letters a day we send out to our constituents in response to particular inquiries, that we do all the investigation, we make all the studies ourselves, and we just use our staffs to do the typing of this material, and that we produce these 1,000 letters a day because we are so brilliant and capable of making that analysis in about 1 minute, I think it would be, or something like that.

Mr. ANDERSON. Your standard is one we should emulate. In this case, the record was 14 volumes.

Mr. KANJORSKI. The fact of the matter is that there is a hierarchy in the system for a filtering process and that when it gets up to your level of decision, you call in your staff, you get briefed, and you accept that they have made the analysis, or in the meantime someone has checked that the analysis hasn't been made, and that is called to attention, and then there is a re-examination.

And the best possible scenario under this process is, the proper analysis is made. You rely on the honesty and truthfulness and integrity of your staff; is that correct?

Mr. ANDERSON. Yes, I thought that was well understood until today.

Mr. KANJORSKI. Well, sometimes Members of Congress don't operate that way, and so they don't understand how that process works in government.

I just want to make it a point, maybe not only to you and not only for the chairman, but for the audience, that the many issues that all of us in government have to handle does not mean that we individually search every fact, every analysis; that that is the reason we have the involved staffs that we have. And we could not possibly respond to all these questions if we personally handled all the investigative work and all the analysis and all the conclusions.

Mr. ANDERSON. Yes. And, Mr. Congressmen, we have 11,000 employees in the Bureau, so to review each of their work would be difficult.

Mr. KANJORSKI. I think we could really get rid of 10,999 and just keep Babbitt and he could do all of it.

Mr. ANDERSON. It's very hard work, but I don't think he could do it all.

Mr. KANJORSKI. I take it, then, you have some strong feelings on trying to provide benefits for the American Indian and to increase their economic viability in our system, so that you are rather sympathetic to the gaming laws and the allowing gaming on reservations and, in some instances, on trust land off reservation; is that correct?

Mr. ANDERSON. Yes. I'm personally sympathetic to these tribes as well.

Mr. KANJORSKI. As a matter of fact, on that issue, did anyone in your office, or any of the members of the panel can examine this—I was struck yesterday that the original partnership that was going to be put together was with another tribe and they ultimately were dropped. And it is the St. Croix Chippewa Tribe.

Mr. ANDERSON. That's correct.

Mr. KANJORSKI. Was there any examination made as to why they were dropped as a partner, or do you get involved in that?

Mr. ANDERSON. I wasn't involved in that.

Mr. KANJORSKI. They do handle other gaming operations, however. They have a license for a casino.

Mr. ANDERSON. Yes, they operate, and I believe they took over the management of their own operations around that time period as well.

Mr. KANJORSKI. The owner of the racetrack seemed to indicate yesterday that they had a questionable reputation and that is why he did not partnership with them.

Is there any information that you know about this tribe that would lend itself to be disqualified as a legitimate partner, since they are only 50 miles away from this location compared to 200 miles from the other tribes?

Mr. ANDERSON. No. That was certainly a surprise to me.

Mr. KANJORSKI. Has there been any complaint made to the Indian Gaming Commission in regard to that by this track owner?

Mr. ANDERSON. I'm not aware of any.

Mr. KANJORSKI. Now, as an Interior official, you had the final say on this application. You were the party that was charged; is that correct?

Mr. ANDERSON. Yes.

Mr. KANJORSKI. And you signed the letter of rejection. But as I understand it, what happened is that originally this would be the assistant's—or the Secretary would have the authority under the law. The Secretary delegates that authority to the Assistant Director of Indian affairs, and that is Ada Deer. But apparently she recused herself because she has associations in Wisconsin and knows the parties involved, and that is how it came down to your level of decisionmaking; is that correct?

Mr. ANDERSON. That's correct.

Mr. KANJORSKI. And in your capacity you are what, now, Deputy?

Mr. ANDERSON. Deputy Assistant Secretary for Indian Affairs.

Mr. KANJORSKI. So you are right under her, and she was blanked out of the picture and passed over.

Mr. ANDERSON. Right. And when she is out of town, at that time, when she was Assistant Secretary, I would serve as Acting Assistant Secretary when she was gone.

Mr. KANJORSKI. Did you follow the Gaming Staff analysis in your process? Were you briefed on their analysis? Is that the basis for your rejection letter?

Mr. ANDERSON. Yes. To clarify some of the discussion this morning, I found the 151 analysis by the career staff wholly supportable. I thought it was a good analysis. I was briefed on it. I found that the evidence that supported the financial under 151 would also basically apply in whole part to section 20 as well.

So in making a policy choice as to the evidence as presented by the Gaming Management Staff, I felt that we could use the basis for 20 as well.

Mr. KANJORSKI. And are you aware of the concerns in the Secretary's office about the effect this decision would have on the future of Indian gaming? Was there a question raised here of what impact this would have on future gaming?

Mr. ANDERSON. Yes, there were certainly policy concerns expressed. In my actual decision letter, I did not rely on that as a rationale, that Congress might take action in this area, but those factors were discussed extensively.

Mr. KANJORSKI. Now, you were in the position to know, then, whether or not there was any political influence involved. Was there? And if so, what kind? Or how should this committee respond, if there was not—how could you explain that there was political influence here?

Mr. ANDERSON. I have absolutely no knowledge of any improper political influence or even, for that matter, from the DNC any rumors or suggestions that there was political corruption going on in this decision.

Clearly, the Minnesota delegation expressed a view on the application. And as I understand now, Congressman Gunderson did as well. But I wouldn't consider that improper political influence. Certainly Members of Congress can write in and ask for the views of the Department on these issues. But with regard to improper political influence? None whatsoever.

Mr. KANJORSKI. But it was rather uniform with all the elected public officials, the Members of Congress, the U.S. Senator, the Governor, the town council, they were all opposed to this; is that correct?

Mr. ANDERSON. My understanding from the record is that they were almost uniformly opposed. I understand that perhaps the Congressman from the area where the tribes came from, at least adjoining to the area, may have supported this. And the Governor's position, in my mind, was not clear.

Mr. KANJORSKI. Of course, I am not from Wisconsin, so I don't know what kind of impact that would be, that uniformality of opposition, but in Pennsylvania that would be pretty clear that something wasn't going to happen, because the political representatives of the people certainly understand the feelings of the people. They don't very often run in opposition to them.

Why should the owner of the track be so surprised that this was on the wrong track and wasn't going anywhere? That is what strikes me. It would seem to me, if I were in his position, I would say, wow, we have the towns against us, we have the legislators against us, we have the Congressmen against us, we have the Governor against us; this is a dead tootsie unless I can turn this around.

Mr. ANDERSON. I think it was naive to think that this was smooth sailing all the way, because there was extensive local governmental opposition. And I wouldn't rely so much on the individuals at all, but as far as the towns, that was really critical. They provided information and evidence that this was—this would cause a detriment to their community.

Mr. KANJORSKI. Now, to your knowledge, was Secretary Babbitt directly involved in this application in any way?

Mr. ANDERSON. No, I wasn't aware that Secretary Babbitt had a view on this at all. Certainly he didn't direct me in any way to make a decision.

The Secretary did attend one meeting I'm aware of in Wisconsin, where the tribes basically discussed and disagreed on this issue. I don't know what his views were expressed, if any, there. But certainly as far as someone or anyone directing me to say, "This is what the Secretary wants" or "This is how you should decide," that never happened.

Mr. KANJORSKI. There have been statements made, and I'm not aware of the exact amounts, but obviously a political contribution was made by opposing tribes to either the Democratic National Committee or the Clinton-Gore campaign, in a sizable amount. Several hundreds of thousands of dollars. And in some analysis heard from the other side they would like both this committee and the Congress and the American people to believe, therefore, that by virtue of the fact this political contribution occurred, somewhat almost within a very short period of time after the decision was constructed, that that was a payment or a driving force for the decision.

And the only thing I would say is that that type of logic is somewhat frightening, because it means you're damned if you do or damned if you don't if you are in politics. And all I can say is we could look at the record on this dog track, and shortly after the State Racing Commission granted this dog track in the middle part of 1989, immediately in the 1990 election, the Governor's campaign, we see the trifecta. In 2 days, received from the track owner, a political contribution from both he and his wife. Something like $13,500.

Using the type of logic that's being used on the other side, we would have to say so, therefore, or because of the decision of issuing the license, this is some sort of a political payback in the contribution. And that wouldn't be reasonable; would it?

Mr. ANDERSON. No.

Mr. KANJORSKI. The fact of the matter is Governor Thompson entertains a rather progressive reputation of being a rather forceful Governor, a successful Governor, and the dog track owner said he was impressed with him. He's a businessman, deals in Wisconsin, knows the Governor, and he wanted to support a Governor that he felt was doing something progressive for the State of Wisconsin. And we shouldn't attribute to that contribution something venal.

Mr. ANDERSON. Right. I have heard the chairman's theory on that and, with all due respect, I think there are just giant holes in it. The idea that there was some type of politically driven decision based on corrupt money given by tribes, when in fact, as I understand from the press reports, those were given 6 months or a year later; that Mr. Skibine and others in our Department, Mr. Slagle now, as our environmental specialist, somehow got this sign or direction, maybe from osmosis, that lobbyists were meeting with others and that somehow that would affect our decision.

I, frankly, am offended by that notion or that suggestion, and I don't know what we can do about it in this type of investigation.

The investigations I'm familiar with, and I worked in the Senate, where—and maybe it was a different time. But we had Chairman Dennis DeConcini and Vice Chairman John McCain, where the committees worked together. They even prepared joint questions together as staff counsel. Our committee led to referrals to the Justice Department, to prosecution and incarceration of people involved in that.

From this perspective I have seen nothing to suggest that that's the kind of evidence or suggestion we have of improper influence. So I'm just astounded by this whole situation.

Mr. BARRETT. Will the gentleman yield?

Mr. KANJORSKI. Yes.

Mr. BARRETT. I have to weigh in on this at this time, too.

I frankly don't like the fact that there's this money floating around. I'm uncomfortable with it. And if I had my preference, everybody would be running like Bill Proxmire from the State of Wisconsin and they wouldn't be raising any money. The reality is we're in a system where people are raising money.

And I understand how the chairman can say, well, look, in the year after this decision was made the Democratic National Committee raised $300 or $400,000. But if anybody is making that statement, I think, at least in the State of Wisconsin, they have to make the identical statement about Mr. Havenick and his relationship with the Governor.

Because in 1989, the State Racing Commission permitted Mr. Havenick to build the racetrack. A nice monopoly in western Wisconsin. On July 6, 1990, he gave $3,500, his wife gave $5,000, his mother-in-law gave $5,000 to Governor Thompson's re-election campaign, $13,500 in one day. And that doesn't count probably $2,000 or $3,000 that came in a little bit before, a little bit after.

So if we're going to be critical of the system, and some can be critical of the system, it better be critical of Governor Thompson. But what we have here is, frankly, the very same individual and organization who could have written the book on this in 1989 and 1990. And I'm not accusing any quid pro quo here.

A decision was made where he received the dog track license. Thirteen months later he gave $13,500 to Governor Thompson. Now, that may not sound like a lot of money in Washington, but in the State of Wisconsin, $13,000, $13,500 in one day, as Mr. Kanjorski said, that's like hitting the trifecta. That's a lot of money.

And so if we're going to be throwing this mud back and forth, then there's plenty of mud to go around here. The only difference is the people who did not get that license in Wisconsin didn't file a lawsuit. That's the difference.

So as we sit here today, yes, the system is bad. We should not have this money in the system. Democrats shouldn't receive this type of money, Republicans shouldn't receive this type of money. Any attempt, though, to change the system would never in a zillion years move through this committee. It would never move through this committee. You would have to be on planet Mars to think that this committee would try to clean the system up.

So when I hear people, and I heard Mr. Souder earlier today, who said that he was against gambling, and that was OK. Then there's others of us who are against gambling, and we came out

against it, but somehow we were tainted because we came out. I don't buy this. I don't buy this for a second.

And the hypocrisy of this committee boggles my mind, because I hear Member after Member saying how bad this is. But there has not been a single Member from that side of the aisle who has said publicly we should look into the biggest embarrassment that has happened in this Congress in the last decade, and that is that unbelievable provision that was inserted in the budget last summer that gave the tobacco industry a $50 billion, not $50 million, not $500,000, not $500, but a $50 billion tax break. And that was done, coincidentally, for the same group where you have the three largest contributors to the Republican party who are in favor of that.

Now, people can say, well, those things happen. What's even more amusing is that when the provision came out in the U.S. Senate, I think there was a recorded vote. Not a single person voted against that. In the House of Representatives they didn't even want to vote. It came out on a voice vote. So you have a $50 billion tax break that was inserted into a budget bill and there was not a single, not a single Member of Congress who would stand up and say that was a good deal.

Now, I think that that's a scandal, and I would think that there would be many self-righteous Republicans who would say, "Wait a minute, we want to look at this." Not a one. Not a one.

So I think we are correct in holding these hearings, and in some ways I disagree with my colleagues, some of my colleagues on this side, because I think there is a legitimate question. I think there's a legitimate question as to whether Mr. Babbitt gave truthful testimony. That question has been raised. That's something that a special prosecutor will consider, and so it's important that we flush this out.

But I have looked through this testimony, and I have looked through this and, yeah, I think that there are some questions, maybe even some problems with the procedure, but what I have heard from the testimony of the career people, and I find it ironic that the chairman was asking you whether you trusted the career people, and then he's asking the career people whether they trust you. I can't think of a more paranoid situation if you can't have people trust each other. But we're sitting here with a situation where we are playing this, and I said this yesterday, you had big guns fighting big guns. And when that happens, someone's going to get shot with a big gun, and that's exactly what happened here.

Now, I would like to go on a little bit, if I could, and look at exhibit 302–A. This is a letter from the Lac Courte Oreilles, Red Cliff, and I think the Mole Lake-Sokaogon—I would mispronounce the, Sokaogon I think is the pronunciation—to Bruce Babbitt. Do you have a copy of that letter?

Mr. ANDERSON. Yes, I do.

Mr. BARRETT. It starts out:

Dear Secretary Babbitt: We have now had an opportunity to review the comments submitted through May 17, 1995, on our application to have the St. Croix Meadows site placed in trust for gaming purposes. There are two points we feel it is necessary to address in response to objections by other tribes to this project.

We have heard now for 2 days the argument that there was sort of a blind-sided to this, that the aggrieved tribes felt blind-sided to this decision. Can you tell me what this letter refers to?

Mr. ANDERSON. Let me make sure I have the right document. 302–A–3.

Mr. BARRETT. I'm sorry, 302–A–7. I apologize. It's a letter dated June 7, 1995, to Bruce Babbitt.

[Exhibits 302A–7 and 302A–8 follow:]

LAC COURTE OREILLES RED CLIFF SOKAOGON

June 7, 1995

05710

Bruce Babbit, Secretary
Department of the Interior
6156 MS; 6229 MIB
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Babbitt,

We have now had an opportunity to review the comments submitted through May 17, 1995 on our application to have the St. Croix Meadows site placed into trust for gaming purposes. There are two points that we feel it is necessary to address, in response to objections by other Tribes to this project.

While we do not concede any competition-based objections, any analysis of the "adverse impact" claimed by any Tribe must be grounded in reality, and must be comparative in nature. It is inappropriate to merely look at inflated estimates of lost revenue. We request the Department of Interior's analysis, include a hard look at membership numbers in relation to revenues which should benefit the largest number of tribal members in their efforts to become self-sufficient. Only in this manner can the Department of Interior fulfill its trust obligation to all of the Tribes voicing their interests.

Any competition-based objection by any other Tribe must be disregarded. No Tribe is entitled to a monopoly on a particular market. Class III Gaming is intended to benefit all tribes, and is an extension of their sovereignty. We too have sovereign rights, and our Tribes are not asking for any favors in this regard, we are simply asking to compete. We feel that this is a concern of the Wisconsin Tribes and in particular of the St. Croix Tribe wishing to control our entry into the market.

In closing, we would also like to reiterate our grave concern over the special comment period extended to the Minnesota Tribes. Clearly their gaming revenues have enabled them to exert considerable political pressure. It is our hope that this influence will not carry over into the decision on whether or not to ultimately approve our application.

EXHIBIT
302A-7

02897

Again, we urge that you promptly process our application. As always, we are willing to meet with you to discuss your concerns in further detail.

Sincerely,

Rose M. Gurnoe, Chairperson
Red Cliff Tribe

Gaiashkibos, Chairperson
Lac Courte Oreilles Tribe

Arlyn Ackley, Chairperson
Sokaogon Chippewa Tribe

EXHIBIT
302A-8

02898

Mr. ANDERSON. Yes, it looks like they're communicating to the Secretary, at least the Secretary's office, their disagreement with the tribes who have opposed their application.

Mr. BARRETT. So they did comment, obviously. This is a letter commenting on the application; is that correct?

Mr. ANDERSON. Yes.

Mr. BARRETT. I just—again, I want to make sure we understand that there was a response filed. It may not have been to the community response, and I don't know exactly if they had the opportunity to do that, but it appears there was something here.

May I continue, Mr. Chairman?

I also, Mr. Anderson——

Mr. ANDERSON. And, Congressman, I don't think this was the only, the first time they became aware. I think they knew of the St. Croix opposition throughout this process. This probably memorialized their analysis, disagreement, but they certainly knew about it throughout.

Mr. BARRETT. OK. You had been questioned earlier about consultation with you and the department. And the allegations, of course, have been that there was some sort of unfair access here. Let's just sort of review that for a second.

Who is the only lobbyist to meet with Mr. Babbitt?

Mr. ANDERSON. The only one I'm aware of was Mr. Eckstein, hired by the applicant tribes. Actually, not by the tribes; by Galaxy Gaming Co., was his actual employer.

Mr. BARRETT. So no lobbyist, as far as you know, met—for the anti-casino tribes met with him?

Mr. ANDERSON. Yes, that's my understanding.

Mr. BARRETT. Are you aware that they also had several phone, I think two phone conversations between Mr. Babbitt and Mr. Eckstein on this matter?

Mr. ANDERSON. I have heard the Secretary testify to that fact.

Mr. BARRETT. Do you know whether Mr. Eckstein also had the opportunity to meet with Mr. Duffy or Mr. Skibine?

Mr. ANDERSON. My understanding is he did meet with both as well.

Mr. BARRETT. Once, twice?

Mr. ANDERSON. I believe it was twice with Mr. Duffy, maybe once with Mr. Skibine.

Mr. BARRETT. Mr. Havenick, did he get an opportunity to meet with him?

Mr. ANDERSON. Yes, he met with both Mr. Duffy and Mr. Skibine, and Mr. Hartman, I believe, too.

Mr. BARRETT. And the sides who were opposing it, did they also get a chance to meet with Mr. Duffy and Mr. Skibine?

Mr. ANDERSON. Yes, they met with him also.

Mr. BARRETT. So is it fair to say that there was a level playing field there, in terms of both the opponents and the proponents of this got to meet with Mr. Skibine and Mr. Duffy?

Mr. ANDERSON. Yes. I suppose one could even argue, given the last meeting there with Mr. Eckstein, they even had a greater advantage in trying to persuade the top person to change his mind. Although, as I started to say, he didn't have a role in this decision.

Mr. BARRETT. OK. I want to turn now to Mr. Hartman, if I may, for a moment, because one of the more intriguing parts of this hearing for me, as a resident of the State of Wisconsin, is the Governor's role and the Governor's position on this.

Before this hearing began, I was under the impression that there was no question the Governor was opposed to this, and I quoted yesterday from a letter that he sent out in June 1995. At the end of the hearing yesterday I looked over at the board. As I was reading the board, I saw a letter dated December 1994, with essentially the identical language to another resident. In both instances the residents were residents of Hudson, WI. So in my mind, and maybe I should go back to the letter here, there was no question as to what the Governor's position was. Just take a moment here, if I could.

It was a June 1995, letter. It was written to a gentleman in Hudson, WI: "Thank you for your recent letter regarding the expansion of Indian gaming to off-reservation sites in Wisconsin. I appreciate the time you took to write. My position continues to be clear. I do not support an expansion of Indian gaming in Wisconsin."

I take the Governor at his word. He says his position is clear. The people here yesterday from Hudson felt that his position was clear. Again, he states his position is clear. Ironically, the people who are saying his position wasn't clear are the Republicans and the proponents of the dog track, questioning my Governor, which—but I look at that and then I look at your comments during your deposition when you were concerned. You were concerned about what would happen if—well, you tell me. You tell me what that concern was, please.

Mr. HARTMAN. I don't remember every page of the administrative record, but I think there were some newspaper articles submitted that had quotations in them from Governor Thompson that indicated he would concur in a positive two-part determination. Certainly the major body of the written materials that we had, indicated—were like that, where he doesn't say "I won't concur in the determination," he says "I'm opposed to the expansion of gaming in Wisconsin."

If you are a skeptical staffer trying to analyze actual facts, I think there's wiggle room in there from a political standpoint. He didn't say, "No, not till hell freezes over will I ever concur in the determination." So I basically had to look, I personally looked at all the information that was in the record, and I couldn't see a clear indication on what the Governor would do.

The Minneapolis area office, in sending out consultation letters under section 20 to appropriate local government officials, nearby Indian tribes, had not sent a letter to the Governor asking for State comment on the factors there in that letter. So we did not have a response back from the Governor of the State of Wisconsin in the consultation process that might have clarified it, although experience has told us that lots of times Governors simply don't respond to that consultation letter; that they save their remarks for later on.

Mr. BARRETT. But what was your concern, if you had come out one way or the other; a political concern, frankly?

Mr. HARTMAN. It was not—the tribes were also telling us, "Don't worry about what he says in public, because there are so many voters in Wisconsin that he has to maintain the support of, but we've been assured through private channels that he's in favor of this and will approve it," which of course you also have to take with a grain of salt and maintain a little bit of skepticism about.

I, to this day, I think it's quite unclear what the Governor would have done. Certainly the written record indicated he would not concur.

Mr. BARRETT. Do you know if anyone recently has asked the Governor his position on this issue? Have there been any public pronouncements from Governor Thompson on this?

Mr. HARTMAN. I don't know. I can't recall any recent ones.

Mr. BARRETT. I will yield back to Mr. Kanjorski at this time.

Mr. KANJORSKI. I will yield.

Mr. WAXMAN. I will pursue a few questions and then might go on my own 5-minute round.

Let me ask each of the three of you. The name Terry McAuliffe was raised yesterday by Mr. Havenick. Do any of you know of any interaction with Mr. McAuliffe and any of you or anybody else at the Department of the Interior, and did he influence the decision?

Mr. Anderson.

Mr. ANDERSON. No. I do know Terry McAuliffe. He was a classmate of mine at Georgetown. But he had no contact with me throughout this process.

Mr. WAXMAN. And do you know whether he had contact with anybody else?

Mr. ANDERSON. No.

Mr. WAXMAN. Mr. Hartman.

Mr. HARTMAN. I don't recognize the name and I have never had any contact, that I know of, with Mr. McAuliffe.

Mr. WAXMAN. Mr. Jaeger.

Mr. JAEGER. No, I don't know him.

Mr. WAXMAN. Now, we had testimony by Mr. Skibine, who said flat out the decision was based on the merits and not due to any political influence. Do you concur in that statement, Mr. Anderson?

Mr. ANDERSON. Yes, emphatically.

Mr. WAXMAN. Mr. Hartman.

Mr. HARTMAN. Yes, I concur.

Mr. WAXMAN. Mr. Jaeger.

Mr. JAEGER. I'm not able to concur with that because I was not involved with the review at the central office level. So I don't have the access to the rationale of that decision being made.

Mr. WAXMAN. You don't know whether it's incorrect; you just don't know whether it's correct one way or the other because you haven't been involved?

Mr. JAEGER. That's right.

Mr. WAXMAN. Mr. Hartman, there has been some discussion about the two memos being different versions of the same memo that addressed the subject of detriment to the surrounding community. The first is purportedly from the Indian Gaming staff to Mr. George Skibine, and the second is purportedly from Mr. Skibine to the Assistant Secretary for Indian Affairs. Did you write those memos?

Mr. HARTMAN. I did the original writing and did the printout on both those memos.

Mr. WAXMAN. Did anyone else write those memos?

Mr. HARTMAN. The basic work for both of those memos was done by several members of the staff at the Lakewood office that the Indian Gaming Management Staff had at the time. So early editions of that particular memorandum on both the issue of best interests and not detrimental had contributions from most of the staff members.

Mr. WAXMAN. They were labeled "draft". I'm wondering why they were so labeled. Does the draft labeling also indicate that the memos were not yet the views of either the entire staff or Mr. Skibine?

Mr. HARTMAN. That's correct. And even in that June 8th memorandum, which is, for lack of a better word, a final draft of a draft, careful reading of it—there are open issues, which a final findings of fact would not have in it. The one that springs to mind is on problem gambling. We had identified the mitigation was inadequate. We had strong reason to believe that it could have been made adequate with a little bit of work, but it would certainly not come out of draft form until it was polished up.

Mr. WAXMAN. I want to ask this last question to Mr. Anderson, if I might. Mr. McAuliffe, you have said, was a classmate of yours. This is the first time I have learned this. But notwithstanding the fact he was a classmate of yours, your testimony is he never contacted you, even though you were the official decisionmaker on the Hudson application?

Mr. ANDERSON. That's correct.

Mr. WAXMAN. Thank you.

Mr. BURTON. Mr. Anderson, you made some comments that indicated that you were incredulous, or words to that effect, that we would impugn the integrity of anybody in this Department.

Mr. ANDERSON. I have heard that regularly for the last 2 days, sir.

Mr. BURTON. One of the reasons why we have that concern is that of the tribes that benefited from this decision in the 1994 to 1996 cycle, only one gave any kind of a contribution, and that was the Lower Sioux Tribal Council that gave $500 to the Minnesota Democratic party. None to the national Democratic party. They gave $500. After this decision was made, there was a contribution of $356,000.

Now, I understand that you may not think that means anything, but it does raise some questions. Up until that time they only gave minimal amounts of money politically. Almost none. And then, after the decision was made, after all these meetings took place, they gave $356,000. That does cause some consternation.

I want to also read into the record a memo that's dated 1 year after the decision was made. It is from Mr. Skibine and I wish I had known of this memo before. We had such a volume of documents that I didn't have a chance to go through all of them along with my counsel before. But this is on——

Mr. ANDERSON. Do you have a copy of that, Mr. Chairman?

Mr. BURTON. I will be glad to give you a copy. Can you give him a copy?

Mr. BARRETT. Mr. Chairman, can you identify it for us?

Mr. BURTON. It's exhibit 337. You should have it there. Exhibit 337.

[Exhibit 337 follows:]

FILE COPY
SURNAME

Indian Gaming Management
MS 2070-MIB

AUG - 5 1996

Memorandum

To: Mr. Scott Keep
Assistant Solicitor, Tribal Government and Alaska

From: George T. Skibine /s/ GTSkibine
Director, Indian Gaming Management Staff

Subject: Analysis of Factual Allegations in Plaintiffs' Appeal Brief in Sokaogon Chippewa Community

Following is the IGMS analysis of the above-referenced brief, with cross-references to the pages in the brief where the allegations are made:

I. ALLEGED VIOLATION OF DUTY TO ENGAGE IN CONSULTATION AS REQUIRED BY 2719(b)(1)(A) of IGRA

A. Factual Background

page 3 "*Should areas of concern with the application be identified, you will be so notified*" refers to the continuing review of the application as received from the Minneapolis Area Director, not to comments received during the extended comment period. IGMS was in the process of reviewing the application to see whether the "best interest of the tribes" portion of the two-part test was satisfied. Perhaps it should have been clearer to say "should other areas of concerns with the application be identified." However, this was what Duffy meant. Had the phrase intended to apply specifically to the extended comments period, it would have been phrased, "Should areas of concern be revealed during the extended comment period, you will be notified." This distinction is important because this Duffy letter is time and again used to attempt to show that the Department promised plaintiffs that they would have the opportunity to rebut the opposing tribes' arguments, and failed to carry through.

Argument on the absence of notification is based on the erroneous interpretation of the meaning of Duffy's letter. The administrative records shows that the IGMS asked for clarification from the tribes several times on the application under review.

EXHIBIT
337-1

1. IGMS asked for additional information on the property deed on January 12, 1995, (binder #12 at 2675), and received a responses from the tribes from Bill Cadotte (binder #12 at 2671 and 2679-2684) and DuWayne Derickson (binder #12 at 2715-2720 and 2726-2735).

   Clarifying information from the tribes was added on January 13, 1995 (binder #12 at 2676-2687).

2. The Area Office was notified on January 2, 1995, that consultation with the Governor of Wisconsin was missing from the application (binder #13 at 3154, second paragraph of Section A). The Area Office and the tribes did not respond.

page 4 "No one in the Department of the Interior is exempt from the tribal consultation process, including the Director of the IGMS." This sentence, from a May 8, 1995, letter to Chairman Ackley, is in response to an undated letter from Arlyn Ackley in which Ackley launches into a vicious personal attack on the IGMS Director whom he accuses of being solely responsible for allowing the additional comment and keeping that decision a secret from the plaintiff tribes. The undated Ackley letter somehow is not part of the administrative record. Our May 8, response goes on to say that we have fully complied with the consultation process.

B. Defendants Violated their Duty to Consult with Plaintiffs

page 6 Plaintiffs here rely on the Duffy letter to indicate that the Department failed to follow its duty to consult under IGRA. As indicated in the May 8 letter from Ada Deer, we believe that we fulfilled our duty under IGRA. As stated before, plaintiffs are misconstruing the Duffy letter to somehow find a Departmental "policy" to consult again with them after closure of the extended comment period. Unlike in Lower Brule, BIA is not arguing that it does not have to comply with guidelines and policies, but is affirmatively stating that it has fully complied with them. In fact, the extended comment period offered more consultation that is required under the Act. DOI had to end this consultation process at some point.

page 15 There is a reference here to the May 8 letter from Ada Deer. The whole letter should be referred to place the statement in context, and the incoming should be added to the record to clarify why the statement on consultation was made. The same goes for the reference to the Duffy letter of March 27, 1995.

page 16 Consultation was extensive. While the Area Director came to the opinion that the local opposition did not indicate detriment to the surrounding community, the Deputy Assistant Secretary reasonably concluded from the strong opposition of local governments, that those governments identified detriment. He reasonably believed that the local government officials were credible evaluators of all the factors, and he used appropriate discretion in agreeing with local government officials in deciding contrary to the Area Director's opinion. The Department had the consultation input of all the parties. The decision was made based upon that input. It was not arbitrary

and capricious, but was based upon solid evidence, which also was credible evidence to local governments that reasonably believed and agreed that a casino at the Hudson Dog Track would be detrimental to the surrounding community.

The Area Office consulted at length with the tribes in response to local opposition as described in the application and its NEPA documents. The tribes were asked specific questions by the Town of Troy (binder #3 at 0612), which were never addressed (binder #13 at 3124-3129). IGMS concluded that legitimate concerns of the governments of the surrounding community had not been addressed in the application (binder #13 at 3154, second paragraph of Section B).

After receiving the comments submitted during the extended comment period, plaintiffs sent a June 7, 1995, letter to Secretary Babbitt, stating their position that "[A]ny competition-based objection by any other Tribe must be disregarded." Plaintiffs' input was received, included in the administrative record, and considered (binder #12 at 2897-2898).

page 16 Mr. Skibine has stated in affidavit to the Court that he made no such statement as "(I) wanted to keep (my) job." Any implication that Mr. Skibine may have made that it would be improper to discuss a staff report until it has been "adopted or approved" referred only to input from his staff preliminary to determining its accuracy and applicability as reflected in a Briefing Paper, February 2, 1995 (binder #12 at 2702), by Emily Ramirez.

The referenced meeting was with the proposed Manager of the facility and not the tribes. The obligation to consult with an Indian tribe does not extend to proposed business affiliates of the tribe. In determining whether an agreement is in the best interest of the tribe and its members, the Department often has comments for the tribe that it does not disclose to the other contracting party. The trust responsibility of the Department is to the Indian tribe, and may be in direct opposition to the interests of a proposed manager. It is quite proper to consult with the Indian tribe before discussing any matters with a proposed casino manager.

II. DEFENDANTS VIOLATED THEIR DUTY TO PROVIDE THE PLAINTIFFS AN OPPORTUNITY TO "RESOLVE" ISSUES THAT MIGHT HAVE A NEGATIVE IMPACT ON THE DEPARTMENT'S TWO-PART DETERMINATION

page 17 The record contains considerable evidence of input from and consultation with the tribes, even after the application and the Area Director's recommendations had been transmitted to the Central Office. A Chronology of Application (binder #11, 2193-2194), submitted by the tribes was received and considered, as were concerns with the application developed by the staff. Attached to the Chronology were duplicate documents which are elsewhere part of the administrative record.

On April 8, 1995, a letter from plaintiffs was added to the administrative record. The letter emphasizes five arguments for placing the land in trust status (binder #10 at 2179).

EXHIBIT
337-3

A May 30, 1995, letter from Donald B. Bruns, a member of the City Council of Hudson, Wisconsin, in support of the application was added to the administrative record (binder #11 at 2373-2374).

A May 30, 1995, letter from State Senator Roger Breske supporting plaintiffs' application was added to the administrative record (binder #11 at 2372).

A May 30, 1995, letter from State Representative Barbara Linton supporting plaintiffs' application was added to the administrative record (binder #11 at 2375-2376).

A May 31, 1995, letter from a former member of the Common Council of the City of Hudson, Carol Hanson, supporting the application was added to the administrative record (binder #11 at 2378-2379).

A May 31, 1995, letter from Herb Giese, a County Supervisor in St. Croix County, in support of the application was added to the administrative record (binder #11 at 2380).

A May 31, 1995, letter from Sandra Berg, was added to the record (binder #11 at 2381).

A letter from Heather Sibbison to Senator Daschle (binder #11 at 2382-2383), memorializes meetings between representatives of plaintiffs and Mr. Duffy and the IGMS, during which plaintiffs' perspective was communicated to the Department.

A letter from Anthony R. Varda to Representative Gunderson rebutting some points of the letter in opposition to the application from Gunderson to Secretary Babbitt was added to the administrative record (binder #11 at 2384-2386).

A June 21, 1995, letter from the Milwaukee County Executive, F. Thomas Ament, supporting the application was added to the administrative record (binder #11 at 2390).

Petitions in support of the application with 114 pages of signatures were added to the record (binder #11 at 2404-2405 with sample signature page at 2406-2121).

Additional letters of support were added to the record (binder #11 at 2422-2516).

In addition, the guidance quoted by plaintiffs applies to actions by the BIA Area Office, not to what happens to the application once it is transmitted to Central Office. It should be clarified that the Minneapolis Area Director DID make a finding favorable to the plaintiff tribes. They should have no complaint about her decision. In fact, the opposing tribes are the ones who argued that the Minneapolis Area Director failed to properly consult with them. Plaintiffs argument here is nonsensical.

III. MR. ANDERSON'S DECISION WAS ARBITRARY, CAPRICIOUS, AN ABUSE OF DISCRETION, OR OTHERWISE NOT IN ACCORDANCE WITH LAW

A. Mr. Anderson's Decision That The Gaming Facility Would Be Detrimental To The Surrounding Community Was Arbitrary And Capricious

1. Congress' Intent As Expressed in § 2719(b)(1)(A) of IGRA and The Department's Guidance

IGMS has no comments on this subsection.

2. Factual Background

page 22 The draft report of a member of the staff (binder #13 at 3194-3209) was the sole conclusion of that member of the staff, who had been asked for a "devil's advocate" analysis of comments. The draft was not on official Department letterhead, but a scanned, computer generated replica of the letterhead. Official letterhead has blue ink, and the original copy in the administrative record and the computer stored file of the draft show that the draft report was not on official Department letterhead. The preliminary nature of Staff comments is reflected in a Briefing Paper, February 2, 1995 (binder #12 at 2702) by Emily Ramirez, "The findings of fact document will need to (sic) examined by the Director, IGMS, as to the position of IGMS in recommending approval or disapproval of the transaction." Mr. Hartman's views DO NOT represent the views of other staff members of the IGMS.

page 23 Footnote 5: The IGMS never finalized its analysis of the "best interest of the Tribe" portion of the two-part test in Section 20 of IGRA. This analysis was on-going, but we decided that it was pointless to pursue this area unless a determination was first made that the gaming establishment was not detrimental to the surrounding community.

3. Mr. Anderson's First Reason That The Gaming Establishment Would Be Detrimental To The Surrounding Community Was Arbitrary And Capricious

page 24 The point here, and a very crucial one, is that the Department has to rely on the record, and the opposition of the local communities in the record is the evidence relied upon. The Department (Duffy) made a decision that the opposition of the local communities was evidence per se of detriment, and that the Department was not going to require the communities for detailed evidence to back up their opposition. Duffy's position, as I recall, was that the Department should not interpret section 20 of IGRA to require local communities to do more than have general objections to the gaming establishment. If that is insufficient, he thought we should have the courts tell us so.

4. No Factual Support Existed For The Opposition of The Surrounding Communities

page 26 It is true that extensive factual findings supporting the local communities' objections are nowhere to be found. DOI's position is that such extensive factual findings are not required under Section 20 of IGRA. See comments under No. 3 above.

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GENERAL COMMENT: The language of the Indian Gaming Regulatory Act does not require that the Secretary find a specific detriment to the surrounding community. It provides that "(T)he Secretary ... determines that a gaming establishment on newly acquired lands ... would not be detrimental to the surrounding community." 25 U.S.C. § 2719(b)(1)(A). Absent conclusive evidence that there is no detriment, the Secretary can reasonably determine that facts have not shown that "a gaming establishment would not be detrimental to the surrounding community."

5. Mr. Anderson Improperly Based His Decision Upon Opposition To Competition By Other Indian Tribes

GENERAL COMMENT: The IGMS financial analyst's draft findings support plaintiffs' argument here. The draft of the Anderson letter I prepared did not contain the "leapfrog argument" that ended up in the final letter. Perhaps Michael Anderson, Hilda Manuel, and Heather Sibbison should be consulted if further elucidation is sought in this regard.

page 34 50 mile radius issue: The IGMS checklist provides for a 100-mile radius on consultation with nearby tribes. The Minneapolis Area used a 50 mile radius because that application was considered prior to the issuance of the Checklist. In general, there is nothing in IGRA that defines or gives any guidance on what is a nearby tribe for purpose of consultation. The mileage is more or less based on what a reasonable man would think is nearby, or surrounding. The radius is used rather than road mileage because it is a simpler way to calculate distances, especially for consultation purposes.

6. St. Croix Scenic Waterway

page 37 Concerns with the NEPA requirements were documented early in the review process in a Briefing Paper, February 2, 1995 (binder #12 at 2702), by Emily Ramirez, "there is a concern that the requirements of the National Environmental Policy Act have not been satisfied for the transaction."

B. Mr. Anderson's Decision Was Arbitrary And Capricious Because The Department Repeatedly Violated Its Own Regulations

This section claims that the Department repeatedly violated its own regulations without presenting any evidence. IGMS has no additional comments on this section.

C. Mr. Anderson's Decision Was Arbitrary And Capricious Because He Did Not Consider Alternatives, He Did Not Consider All Options, He Did Not Analyze All The Facts, And He Did Not Provide The Plaintiffs An Opportunity To Challenge His Views

pages 41-47 Plaintiffs argue in this section of their brief that the Department was required to consider all reasonable alternatives before denying plaintiffs' application, relying on Motor Vehicle Mfrs v. State Farm, and Asarco v. EPA. DOI's views are that Section 20 of IGRA neither requires the agency to look at alternatives, nor requires it to give plaintiffs a chance to cure the defects before making a finding. The Tribe can always submit a new application curing any identified defects.

IV. MR. ANDERSON'S DECISION WAS BASED UPON IMPROPER POLITICAL INFLUENCE

pages 47-53 The only point made by plaintiffs in this section of the brief is that the affidavits submitted by DOI officials do not specifically deny improper political pressure, and that this silence constitutes an admission. IGMS hopes that there is no legal merit to this argument. We are ready to supply any additional affidavits, if desired.

The record contains evidence that plaintiffs sought political influence in the decision-making process. In a June 5, 1995, letter, Senator Daschle agrees to facilitate meetings between Mr. Havinick and former Representative Moody with Secretary Babbitt to discuss the Hudson Casino proposal. Both Messrs. Havinick and Moody were arguing in favor of the proposal.

V. THE DEFENDANTS REPEATEDLY DEPARTED FROM DEPARTMENT POLICIES WITHOUT EXPLANATION

pages 53-54 GENERAL COMMENT: None of the 10 items mentioned are existing policies of the Department. In its June 11 Order, the Court specifically found that John Duffy had the authority to entertain further comments from opposing tribes, and did not violate IGRA in doing so. ("[T]he Department's openness to information evidences its willingness to consider every perspective in order to reach a decision based on all available information.")

page 53 The Checklist used by Area Offices outlines the procedures for consultation. However, after an Area Director has transmitted the Findings of Fact and Recommendation to the Central Office, standard practice is for the Central Office to address concerns and consultations when it believes that it would be most expeditious, even while it often asks the Area Office to address concerns and consultations. This administrative record provides examples, such as – the IGMS worked directly with the tribe on land and title concerns (binder #12 at 2675) and (binder #12 at 2715-2720 and 2726-2735), but asked the Area Director to consult with the Governor of Wisconsin (binder #13 at 3154, second paragraph of Section A).

page 54 Prior to the Hudson Dog Track application, only two off-reservation land acquisitions for gaming purposes had reached a Department decision: Forest County Potawatomi, Green Bay, Wisconsin and Sault Ste. Marie, Detroit, Michigan. These applications are considered on a case-by-case basis, and there is no "Departmental policy" on how these are considered. In both cases the Department agreed with the recommendation of the Area Director, but in neither case was there a conflict in viewpoints between the tribes and local government officials on detriment to the surrounding community. It is not the policy of the Department to always follow the recommendations of Area Directors and the Indian Gaming Management Staff. In this application the IGMS had not reached a conclusion on whether approval of the application was in the best interest of the tribe and its members, and its conclusion on detriment to the surrounding community was not final. In addition, the draft finding on detriment in

the record represents the views of the IGMS Financial Analyst, and not the official determination of the Staff. The official determination of the IGMS would have to be signed by the Staff Director, and not stamped DRAFT.

VI. THE DEPARTMENT HAS RECENTLY CHANGED ITS POSITION AND NOW AGREES THAT A DECISION CONCERNING THE ACQUISITION OF PROPERTY IN TRUST PURSUANT TO 25 U.S.C. § 465 MUST BE BASED UPON THE FACTORS CONTAINED IN 25 CFR §151.10

IGMS believes that the Anderson decision does address the factors in 151.10. At the end of the decision, the reasons given for a negative determination under the "detrimental to the surrounding community" are cited as the reasons relied upon by the Secretary in exercising his discretionary authority to refuse to take the land in trust under 25 U.S.C. § 465, and implementing regulations in 25 CFR Part 151. We believe that it is sufficient for the Secretary to rely on any of the listed factors as the basis for a determination not to take land into trust. In this case, the purpose of the acquisition is for a gaming establishment, and for the reasons in the letter, the Secretary does not believe that he should take the parcel in trust if it is going to be used for gaming. The reasons cited in the letter are not arbitrary or capricious under the APA.

VII. MR. ANDERSON'S DECISION UNDER 25 U.S.C. § 465 WAS ARBITRARY AND CAPRICIOUS BECAUSE IT FAILED TO ADDRESS THE MANDATORY FACTORS CONTAINED IN 25 CFR 151.10

See comments under Section VI, supra.

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EXHIBIT
337-8

Mr. BURTON. That on August 5, 1996, a year after this decision was made, in section 4, on page 26, Mr. Skibine says: "It is true that extensive factual findings supporting the local communities' objections are nowhere to be found." And then he says "DOI's position is that extensive factual findings are not required under Section 20 of IGRA." Then he says, "See comments under No. 3 above."

Then you go to No. 3 and he says: "The point here, and a very crucial one, is that the Department has to rely on the record, and the opposition of local communities in the record is the evidence relied upon. The Department," and then he puts in parentheses, "(Duffy), made a decision that the opposition of the local communities was evidence per se of detriment, and that the Department was not going to require the communities for detailed evidence to back up their opposition. Duffy's position, as I recall, was that the Department should not interpret section 20 of IGRA to require local communities to do more than have general objections to the gaming establishment. If that is insufficient, he thought we should have the courts tell us so."

But Mr. Duffy was the one who was making that decision. Mr. Duffy is the one who benefited from this decision when he left the Department of the Interior. Now, I don't know how high up this goes, but Mr. Skibine says very clearly it is true that extensive factual findings supporting the local community's objections are nowhere to be found. Then he refers to Mr. Duffy's evidence per se of detriment. But it was Mr. Duffy's decision or interpretation. It's there in his memo. You may read it if you like.

Mr. Duffy then goes to work for a law firm and starts representing the Indian tribes that he helped while he was at the Department of the Interior. Now, this may all be circumstantial. It may all be hyperbole. But the fact is these tribes gave little money, $500, in the 1994 to 1996 cycle. After the decision was made, they made $350,000 in contributions. After the decision was made, both Mr. Duffy, the counsel to Mr. Babbitt, and Mr. Collier, the chief counsel, leave and go to work for a law firm and now they represent the Shakopee Tribe and those other tribes.

Now you can interpret that any way you want, and you may say this is all baloney.

Mr. ANDERSON. It is.

Mr. BURTON. But I don't agree with that, and I think the people who might be paying attention to this might have some questions themselves.

And with that I will be happy to yield the balance of my time to my colleague.

Mr. ELLIOTT. Mr. Chairman, I want to register an objection.

Mr. BURTON. You may register the objection, but you are not under oath and you are only here as counsel.

Mr. ELLIOTT. I understand that, but I am asserting a privilege on the part of the United States in this litigation position.

Mr. BURTON. All right. You may.

Mr. ELLIOTT. This is a document from client to counsel relating to that litigation. It was done after the decision was made, and this is a privilege we——

Mr. BURTON. This was a document given to us by the Department and, as such, we have felt that it could be put in part of the

Congressional Record and referred to in testimony and we have so done.

Mr. ELLIOTT. I understand that, sir. But every document——

Mr. BURTON. You have raised your objection. I yield the balance of my time to my colleague.

Mr. SNOWBARGER. Just quickly, Mr. Chairman. I understand I will have 5 minutes later on?

Mr. BURTON. You will.

Mr. SNOWBARGER. I want to ask Mr. Anderson some questions here, because it concerns me a little, some of the discrepancies here.

You indicated in your testimony under questioning that you signed the July 14th letter, frankly, based on review of career staff and their determinations; that you didn't go through making a separate determination of your own; is that a fair statement?

Mr. ANDERSON. That is not a fair statement. I basically relied on the evidence that was provided to support both the findings under section 5 of the Indian Reorganization Act and also section 20 of IGRA.

In deferring to their factual determinations of whether there are impacts on local communities and traffic problems, I don't surrender my policy review as to how I'm going to apply those facts. And in this case I thought it was proper to apply it to section 20.

Mr. SNOWBARGER. Mr. Chairman, I think the time has expired.

Mr. BURTON. The gentleman's time has expired. You will get your 5 minutes later.

Mr. Kanjorski.

Mr. KANJORSKI. Yesterday when Mr. Havenick testified, I was rather harsh on the agreement. I am still harsh on the agreement. It wasn't directed necessarily at him. It could be directed at the Department, however, or the Congress and how we structured this. It seems to me the only reason why the Indian tribes, who have a necessity for this money, and I think that is conceded, are dealing with nontribal gambling interests, whether they be from Florida, Las Vegas, Atlantic City, very professional gaming people, contrary to what I think was the intent of Congress when we wanted to help the Indian tribes out, earn money here, we have these people that come in and put these deals together. Why hasn't the Department been a little stricter in looking at the contracts and the arrangements, the fees to be made, the sale prices, the rental prices?

And I heard the comment earlier made that the reason these non-Indian tribe participants are out there is the Indian tribes don't have the equity. Why don't they establish or ask the Congress to establish mechanisms by which they can get the equity, whether it be a small business investment corporation or other type entities that exist under Federal law? If we are really trying to help the Indians earn money, why are we subjecting them to rather draconian negotiations with very experienced, one-sided experience gaming people?

Mr. ANDERSON. Well, initially those were the only sources available to tribes for funds. But many tribes now, when they get the initial startup funds, have taken on the management themselves. And I think that is definitely preferable so that the tribe gets all the funding.

The Department in its resources can do a better job in examining these leases. There has been criticism, I think it was referred to yesterday, in an IG report that we needed to scrutinize the leases more carefully. We have been attempting to do that and review them, but certainly the tribes, not having a lot of money, have sometimes had to go to these operations. That is why the National Indian Gaming Commission regulates this so carefully.

Mr. KANJORSKI. Well, we wouldn't have this problem here of people contributing money and trying to work, it would be a straight arm's-length deal that either the three tribes involved here would have come in and tried to buy a losing race track, or some other offsite opportunity where 100 percent of the profits and proceeds would have gone to the tribe instead of these convoluted agreements of purchasing part of the property, leasing the parking lot and doing things that appear to me to be with the intention of gaining an ultimately higher profit by individuals who were never intended to be helped by Congress.

And it is sort of a criticism on my part that it just seems to me that we can find mechanisms to help finance. I know for a fact that the Eskimo tribes in Alaska, there are at least three successful multibillion-dollar investment corporations up there. Why do they have to go to Florida gambling interests or Las Vegas gambling interests or Atlantic City gambling interests to put a casino together? Unless are casinos losers? Maybe I haven't—I have been traveling around the country. In the middle of deserts, see these thousands of cars and very successful casinos, so it is almost a God-given determination. If I get a license for a casino, I have got gold. Now, why are we encouraging such an inordinate amount of the share of those profits to go to non-Indians when the intent of this act is to help some of these economically distressed Native American tribes?

Mr. ANDERSON. The idea of some kind of development fund is certainly an interesting one. Congress did in IGRA say that management companies could receive up to 40 percent of the proceeds of the net revenues, so they did cut on that issue in 1988.

Mr. KANJORSKI. If the management company is owned by the tribes, that is OK, but I quite frankly don't sympathize with, when you have got gold, why you are handing it a way to the professional gambling interests of this country.

Mr. ANDERSON. In some cases it has been to the advantage of the tribe to go to reputable companies like Harrah's or other large companies and use their expertise, but the tribe, frankly, doesn't have the experience to run it. And then eventually the idea is to have them take it over directly.

Mr. KANJORSKI. There are no Native American entrepreneurs that have the capacity to run casinos profitably?

Mr. ANDERSON. There are very few. There are very few.

Mr. KANJORSKI. Maybe the reason why to have more of them sent off to the schools that would equip them or to the business places that would equip them. It just seems to me that this is almost a license to gain an inordinate amount of wealth; 30 percent of a gambling casino is quite a profit, quite a profit.

I yield back, Mr. Waxman.

Mr. BURTON. The gentleman yields back the balance of his time.

Mr. Snowbarger.

Mr. SNOWBARGER. Thank you, Mr. Chairman. Rather than go through this in questioning, the concern I have, Mr. Anderson, is your statement both in your testimony and in the final determination letter that indicates the application, if granted, would have caused detriment, destroying the community. And we have got at least three exhibits or four exhibits, maybe more, in the information provided to us that indicate from staff, from a staff level, there is not enough evidence to say that there is detriment to the community under a section 20 analysis. We have at least four different places where it says that. Mr. Hartman——

Mr. ANDERSON. Could I address that?

Mr. SNOWBARGER. It was not a question, thank you.

Mr. Hartman, if I could ask you a question, I have looked at your June 8 memo. What was your opinion; having reviewed the application, what was your opinion about whether or not this was going to be detrimental to the community?

Mr. HARTMAN. Well, throughout this process and all similar processes, I see strongly held opinion. And part of my job as a staffer is to try to penetrate through that opinion and look at objective factors that might lie behind it, such as a gridlock——

Mr. SNOWBARGER. And your ultimate conclusion of that process was what?

Mr. HARTMAN. I couldn't find identifiable detriment on which these objections were based.

Mr. SNOWBARGER. It is my understanding that you were, you may have been, the final author of that memo, but you were not the only author of that memo. Would that be correct?

Mr. HARTMAN. That is correct. I was final author of portions of that memo and sole author of portions of that memo.

Mr. SNOWBARGER. Also involved in that, though, were, I believe, Emily Ramirez and Ned Slagle, and Ned Slagle is the environmental person on staff; is that accurate?

Mr. HARTMAN. That is correct.

Mr. SNOWBARGER. You also had an opportunity, I think, to review the area Director's memo. It was about a 32-page memo that addressed a lot of these questions at that level. First of all, did you have an opportunity to review that?

Mr. HARTMAN. Yes, I did.

Mr. SNOWBARGER. Were you satisfied that they had done everything they needed to substantiate their recommendation in favor of the track application?

Mr. HARTMAN. The analysis, as we approached it, was a little different than that. We decided that we would do in effect a de novo review going back to the source documents that they had attached to the——

Mr. SNOWBARGER. Can I call your attention to page 67 of your deposition? Let me just read it for you real quickly.

Did you have the opportunity to review the 32-page recommendation from the area Director?

Mr. HARTMAN. Yes.

In your opinion, did the area office address the necessary areas for a recommendation of this sort?

Mr. HARTMAN. Yes.

Mr. SNOWBARGER. So I presume your answer would be the same today?

Mr. HARTMAN. It is. They addressed all the areas.

Mr. SNOWBARGER. OK. Had you been advised prior to finishing this June 8 memo that the decision had already been made based on other grounds, based on part 151?

Mr. HARTMAN. I don't believe I had been advised that a decision had been made, but the discussions in certainly the June time period, possibly the May time period, indicated that the application was not being looked at positively. From the fact that nobody came around and said, well, let us finalize this not detrimental and get on to the best interest of the tribe is an implicit indication that we weren't headed toward approval.

Mr. SNOWBARGER. Do you think anybody paid attention to your memo about not detrimental in the discussions about how we justify our final decision?

Mr. HARTMAN. Yes.

Mr. SNOWBARGER. Do you know that for a fact?

Mr. HARTMAN. I believe George Skibine testified here earlier that it was based upon my memo that he made the recommendation that the decision be based on part 151 as opposed to a section 20 determination.

Mr. SNOWBARGER. Yet the final decision was based on section 20 and not on part 151, is that——

Mr. HARTMAN. It referred to section 20. It wasn't based upon that. It was the same ultimate decision, but words were crafted to include additional references.

Mr. SNOWBARGER. In another document that we have, it indicates that some of the discussion that was going on within the Department was actually the work of one of the career staff members playing devil's advocate. It doesn't identify that devil's advocate. Are you that devil's advocate?

Mr. HARTMAN. That is me.

Mr. SNOWBARGER. And June 8 is the devil's advocate memo?

Mr. HARTMAN. Yes, I was trying to make as strong a case as I could in analyzing not detrimental to the surrounding community, looking at all the factors and seeing if it was——

Mr. SNOWBARGER. You were joined in devil's advocate, though, then by Emily Ramirez and Ned Slagle as well. This was not your professional opinion, but just sort of a devil's advocate kind of position, saying here is what we think, if you really analyze this, someone else is going to be able to show.

Mr. HARTMAN. The early parts of that memo were written by those other two staffers in part, but the changes from a draft that existed in the February/March timeframe that were written by those was added to by me, and the new editions were entirely mine.

Mr. SNOWBARGER. Did Ms. Ramirez or Mr. Slagle indicate to you their dissatisfaction with your changing of their portions?

Mr. HARTMAN. No, because I didn't change their portions. I believe Ms. Ramirez had retired, and the portions that Ned had worked on had remained unchanged. He reviewed——

Mr. SNOWBARGER. So really you were only changing your portions of the memo anyway.

Mr. HARTMAN. That is correct.

Mr. SNOWBARGER. Did Mr. Anderson, prior to July 14th, ever consult you about that analysis and about your conclusion that there was no detriment to the community?

Mr. HARTMAN. I really don't recall. I have a vague memory of a meeting I was in that he was in where we discussed it, but I just can't tell you for sure.

Mr. SNOWBARGER. Well, his conclusion in the letter and in his testimony today is 180 degrees away from what your decision was as well as that decision joined in by Emily Ramirez and Ned Slagle. You don't remember a conversation with Mr. Anderson saying that despite what you had to say, he was going to rule a different way——

Mr. HARTMAN. No.

Mr. SNOWBARGER [continuing]. On the section 20 analysis?

Mr. HARTMAN. If we met together, obviously I didn't convince him.

Mr. SNOWBARGER. Mr. Chairman, my time has expired.

Mr. BURTON. The gentleman's time has expired.

Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman. I would like to stay with that document, if I could, Mr. Hartman. I, frankly, have never heard of a devil's advocate draft. Is that something that is done on occasion, or was this unusual to do a devil's advocate?

Mr. HARTMAN. I think was probably just a vernacular that we tossed out at that time.

Mr. BARRETT. What was going to be the purpose of this?

Mr. HARTMAN. To see whether or not the additional information that had been supplied up to that April 30th date brought forth new information that indicated detriment.

Mr. BARRETT. It seems throughout this entire process that the assumption that the Department was making was that this matter was going to end up in litigation; is that correct? Mr. Anderson——

Mr. ANDERSON. Actually, at that time they have the option of filing a motion to reconsider. If we had relied strictly on 151, though, they would have been barred from filing any litigation at all.

Mr. BARRETT. It does seem, as I look through the memos, that that was a concern, if nothing else, that you want to bolster your case. Is that something that is unusual, or is that something——

Mr. ANDERSON. Having a good administrative record is something that we do try to do.

Mr. BARRETT. Did you anticipate—and maybe this is a moot question—had the decision gone the other way, do you anticipate there would have been litigation from the other tribes, for example?

Mr. ANDERSON. Yes. I frankly couldn't have signed a report that went the other way. I don't think there are any facts justified that there was no detriment and also that there was something in the best interest of the community; that clearly given the parking lot lease was something that we couldn't sign off on. Yes, there would have been litigation, I think.

Mr. BARRETT. As a safe bet. The lawyers were going to win in this one.

Mr. ANDERSON. As they usually do.

Mr. BARRETT. I am a lawyer. You are a lawyer. I understand that.

Mr. Hartman, going back to you, it makes me feel a little better knowing that you were the devil's advocate on this memo because there are a couple of things in there that I looked at and I thought, holy moly, we are looking at a different document here. I would like to go over a couple of those.

One, perhaps a minor one, yesterday we had Sandra Berg testify here, and one of the statements in here is that she asserted, I think, that the opposition was receiving money from the tribes in opposition to this, and the county supervisor who was here yesterday said that wasn't true, and, in fact, Ms. Berg indicated that she has in the past, and may even currently, and I hope I am not misstating this, that she has done work with the track. Were you aware of that when you put that in here?

Mr. HARTMAN. Not that specific fact, no.

Mr. BARRETT. One of the other things that surprised me as I looked through it was your reference to the April 1993 constitutional amendment. As a resident of the State of Wisconsin, I didn't view that as a technical constitutional change. That was a pretty big deal. In fact, I don't know if you were here yesterday, but when we saw the video yesterday, Governor Thompson in the video boasted that he and Attorney General Doyle were the ones responsible for having that referendum, that constitutional amendment and subsequent referendum placed on the ballot. What was your basis for thinking it was just a technical amendment?

Mr. HARTMAN. I don't remember exact specifics, but in the record there is a description of the process that was being conducted at the time, and apparently the—there was some doubt as to whether the Wisconsin State lottery actually complied with the constitution of Wisconsin back in the—I think the late 1980's, so the constitution was changed. I think there was a constitutional prohibition against gambling, and there had been some controversial rulings by attorneys general that tried to slip the State lottery in there, but it was pretty unclear so that the State of Wisconsin went back out and changed its constitution.

And I have forgotten even who it was I talked to about the 1993 ballot, but most of the issues on the 1993 ballot were advisory. And it is my recollection that the one on the constitutional issue was the one to bring the constitution into conformance with the actual public policy of allowing gambling by the State in the form of a State lottery.

Mr. BARRETT. In case——

Mr. HARTMAN. But I am not an attorney.

Mr. BARRETT. In case you meet this issue again, and for some reason I think it is possible that you do, I should point out that what happened in the 1980's was that there were two constitutional amendments. One to permit pari-mutuel betting, the other to permit the lottery. Subsequent to those decisions was the time when you had decisions made essentially by either the Federal district court, and perhaps the State Attorney General played a role, too, that opened the door to the Indian casino gambling. I don't think that that is disputed.

My perception of this was that this was an attempt by the legislature and the public to assert that what they meant in the 1980's was not all types of gambling, but to limit it to a lottery and casino. I realize that under the interpretations of IGRA and other Federal court rulings that the State may not have the authority to do so, but that was the intention, that lottery, as you define it, was a lottery as I think we use it, a common description of it, and not lottery in terms of a broad definition of gambling. So just for your benefit.

I also just want to state for the record, as we all know, there are several different proceedings going on. There is this proceeding. There is the civil litigation in the Western District of the State of Wisconsin, and there is the pending decision by the Attorney General. Earlier I made reference to that. I wanted to clarify for the record that I recognize that that decision has not been made at this point.

Mr. BURTON. Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

First of all, to the witnesses, I want to thank you for being here. I was very impressed with your testimony.

I want to go to you, Mr. Anderson, just to clarify some things. A little bit earlier in the testimony, the chairman, I think, was asking you about your statements with regard to environmental impact. And it may have been—I can't remember whether it was counsel or the chairman, but they said that when this—when the race track was approved, apparently it was they had anticipated a certain amount of cars coming into the area, and then when you looked at it or your staff looked at it, one of your concerns was the number of cars that would be coming in. First of all, let us clarify, when a dog track was established, you all had nothing to do with that; is that right?

Mr. ANDERSON. That is right. That is a State assessment.

Mr. CUMMINGS. That is a State assessment. So you had nothing to do with that.

And would you go back—would it be your normal course, in looking at the environmental impact, to go back and see, look at records from when they approved a dog track to determine how many cars they anticipated and then make any kind of comparisons or contrasts? Would that be your normal, or was this such a unique kind of case that you don't have a precedent?

Mr. ANDERSON. Well, typically you would use that as baseline data and then try to update the information that came forward.

Mr. CUMMINGS. Do you know whether that was done in this case?

Mr. ANDERSON. I believe most of the information relied upon was from 1988 as to the effects, and that was one of the problems here.

Mr. CUMMINGS. Can you elaborate on that a little bit?

Mr. ANDERSON. Well, particularly with regard to the St. Croix scenic riverway, the effects that the dog track would have, that there was actually dog waste that was going to go into the river, the status of what facilities were able to treat wastewater at that time was different than occurred in 1995. So the environmental analysts had to look at a different situation in 1995 versus 1988, I think, when the first assessment was done.

Mr. CUMMINGS. So did you—would you go back and talk about the number of cars that you were concerned about? The chairman said that there would be still—the implication was that there would be less cars now, I mean with regard to the casino, as opposed to the dog track. I am just wondering what was your feelings on that? I know you had talked a little bit earlier about the fact that the dog track was not doing well, so therefore the traffic was not as high as maybe it was anticipated from the beginning. But can you elaborate on that, because it did not come through very clearly?

Mr. ANDERSON. I think the car traffic would be higher for the casino than the current dog track. Whether the 1988 assessment analyzed 8,000 cars, I don't know, I haven't studied the record that far, but certainly it could be expected, given the traffic of this casino would be greater than what the dog track had currently enjoyed.

Mr. CUMMINGS. And you had no doubt about that. What was that based upon?

Mr. ANDERSON. Well, there were facts and impacts on the infrastructure in the record at the time. Now, as I mentioned in my testimony, I was briefed on the record and did not read the 14 volumes. This is basically information that was in with the career people.

Mr. CUMMINGS. Now, it is interesting that so often here on the Hill we hear the other side talking about big government interfering and the fact that decisions should be—we should give local government more say. As I listen to your testimony, it sounds like that is basically what you did. You gave a lot of credence to what the local people were saying. Is there anything unusual about that?

Mr. ANDERSON. No, that is actually what section 20 of IGRA requires that you give credence. I think the big debate was how much. That is the disagreement that some of us had within the office; in fact, that Tom and I had about can a bare assertion of opposition be enough. And I didn't agree with that either. I agreed with some of the Solicitor's Office. But that is not what our letter said. It did have evidence based on community objections, based on traffic, based on the jurisdictional conflicts with their land use plans. So—but certainly you try to invest in the local governments when they express their opinion.

Mr. CUMMINGS. Now, let me ask you, do you know a Troy W. Woodward, who is an attorney advising the Office of the Solicitor?

Mr. ANDERSON. Yes, I do.

Mr. CUMMINGS. Do you know a Paula Hart, who is a paralegal specialist?

Mr. ANDERSON. Yes.

Mr. CUMMINGS. You testified a little bit earlier about the staff, I think, when the chairman asked you some questions, and you said that you felt very comfortable with the staff that prepared all the documents for you with regard to their honesty and integrity. Do you feel that way about Paula Hart and Troy M. Woodward?

Mr. ANDERSON. Yes, I do.

Mr. CUMMINGS. Mr. Chairman, I would ask unanimous consent that we submit, make a part of the record the affidavits of Paula

Hart and Troy M. Woodward wherein they state that, I am unaware of any improper interference by any political appointee in the decisionmaking process with respect to the application, referring to all of the things that we have been talking about today.

Mr. BURTON. No objection.

[The affidavits referred to follows:]

STATEMENT OF PAULA HART

I, Paula Hart, do hereby state:

1. I am currently employed at the Department of the Interior (Department) as a Paralegal Specialist on the staff of the Indian Gaming Management Office (Gaming Office) in the Bureau of Indian Affairs (BIA). I have worked as a career employee at the Department since approximately March of 1992 and from November 1, 1994 through July 14, 1995, I was employed as a Management Analyst in the Gaming Office.

2. I first became aware of the application by three Chippewa tribes asking the Secretary of the Department to take the Hudson Dog Track as land-into-trust (Application) in late 1994.

3. With respect to the Application, my role was to work on the question of how the land acquisition affected tribal-state compacts and whether or not the tribes had the authority to take the Dog Track into trust. I also was responsible for noting any technical legal deficiencies in the Application.

4. At no time before, during or after consideration of the Application was any pressure placed on me by any political appointee at the Department with respect to my views on the Application.

5. Although it was not my role to make the final decision on the Application, I had concerns about whether the Application should be approved, with my primary concern being that the existing effective tribal-state compacts did not allow the tribes to game on off-reservation land. New tribal-state compacts permitting gaming at the Dog Track may have been necessary. Furthermore, the Application proposed that the Dog Track would be held jointly by all three Tribes, which may have required a joint tribal-state compact.

6. To the best of my knowledge, I am unaware of any pressure being placed on any other Department employee by a political appointee with regard to the Application.

7. I am unaware of any improper interference by any political appointee in the decisionmaking process with respect to the Application.

8. I believe that the decisionmaking regarding the Application was handled in a manner similar to which the decisionmaking for other applications to take off-reservation land-into-trust for gaming is handled.

9. I am unaware of any Department employee in the D.C. offices of the Department who was in favor of granting the Application.

10. At no time was I aware of, or did I hear any rumors regarding, any political fundraising or campaign contributions by any of the tribes or other persons or entities interested in, opposed to or otherwise connected in any way with the Application.

IN WITNESS WHEREOF, I have signed this Statement this 20th day of January, 1998.

Paula Hart

Witness, Terri Boulding

STATEMENT OF TROY M. WOODWARD

I, Troy M. Woodward, do hereby state:

1. I am currently employed at the Department of the Interior (Department) as an Attorney-Advisor in the Office of the Solicitor, Division of Indian Affairs. I have worked as a career employee at the Department since approximately November, 1994 and from November, 1994 through July 14, 1995, I was employed in the Office of the Solicitor, Division of Indian Affairs.

2. To the best of my recollection, I first became aware of the application by three Chippewa tribes(Tribes) asking the Secretary of the Department to take the Hudson Dog Track as land-into-trust (Application) sometime in early July, 1995.

3. With respect to the Application, my role was to interpret the Indian Gaming Regulatory Act (Act) as it applied to the trust acquisition proposal. I attended several meetings with the then Associate Solicitor for the Division of Indian Affairs (Robert T. Anderson) to discuss the requirements for Indian gaming on off-reservation land acquired in trust after October 17, 1988. I was of the opinion that the Act required that before the Tribes could conduct gaming at the Dog Track, they needed a determination by the Secretary that such gaming was in the best interest of the Tribes and was not detrimental to the surrounding community. I also was of the opinion that the "not detrimental" finding required an objective showing of detriment by the local communities and that mere opposition was not sufficient under the Act to show detriment.

4. At no time before, during or after consideration of the Application was any pressure placed on me by any political appointee at the Department with respect to my views on the Application.

5. While it was not my role to make the final decision on the Application, I had concerns about whether the Application should be approved, with my primary concern being that the Department should carefully scrutinize the financial aspects of the proposed casino. Mr. Thomas Hartman in the Indian Gaming Management Staff (IGMS) had raised questions about the prudence of the Tribes' entering into the business deal as proposed by the Tribes. With that in mind and because of the Department's trust responsibility to the Tribes, I had serious concerns about approving the application.

6. To the best of my knowledge, I am unaware of any pressure being placed on any other Department employee with regard to the Application.

7. I am unaware of any improper interference by any political appointee in the decision making process with respect to the Application.

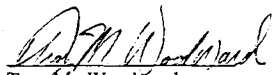
8. I believe that the decision making regarding the Application was handled in a

manner similar to which the decision making for other applications to take off-reservation land-into-trust for gaming is handled.

9. I am unaware of any Department employee in the D.C. offices of the Department who was in favor of granting the Application.

10. At no time was I aware of, or did I hear any rumors regarding, any political fundraising or campaign contributions by any of the tribes or other persons or entities interested in, opposed to or otherwise connected in any way with the Application.

IN WITNESS WHEREOF, I have signed this Statement this 21st day of January, 1998.



Troy M. Woodward

Mr. CUMMINGS. Thank you very much.

Mr. BURTON. Let me end up by saying—yes, we have someone else who wants to speak. Oh, Henry, of course.

The gentleman from California is recognized for 5 minutes.

Mr. WAXMAN. Thank you very much, Mr. Chairman. I appreciate the long day it has been for all of us.

Let me recap what we have learned in the last 2 days. Yesterday we had the accusations that this decision was based on political pressure, that there were campaign contributions, lobbyists, and that the victims were a poor tribe. Yet we also found out that one of the so-called victims was Mr. Havenick, who stood to gain financially a lot because he was the one behind the whole dog track and then the casino and very much wanted this approval. He has hired as many lobbyists and lawyers as anyone else. As a matter of fact, Mr. Havenick has been here all day with three of his lawyers. It has been a long day. And he was here yesterday as well. He is now in litigation, and he is trying to overturn this decision.

But the Members all agreed, Democrats and Republicans, that the decision to deny the application for a casino was the right one. The local community didn't want it. The Republican Governor didn't want it. The Republican Congressman didn't want it. There is nobody in the delegation in the House that wanted it. The people in Minnesota were screaming about it. And it didn't make sense to have another source of gambling, another casino, so far away from the tribes and so close to population centers and other gambling sites. So then the issue was not whether the decision was right, because everybody seemed to think the decision was right. The question then shifted to was there improper political pressure.

Today, we have had four people at the Department of Interior testify under oath that they made the decision on the merits without political interference, that nobody was telling them to reach this decision. The affidavits in support of Mr. Skibine that he did not mention political pressure in his meetings with Havenick have already been entered into the record, so we have those who didn't have a financial interest, who were public servants and were at that meeting, asserting that Mr. Skibine did not say there were political pressures. The only ones who are asserting that there were political pressures are those who have a financial interest in getting this casino approved. I think that is an accurate summary of where we are to date.

There was a suggestion by Mr. Havenick for the first time about Mr. McAuliffe, and we have no one to verify it. It came out of left field. It never had been mentioned before. And you would think, Mr. Anderson, you were a classmate of his, Mr. McAuliffe would have contacted you if he really wanted to do something to affect the decision on this casino proposal. He did, evidently, if he said anything at all, what a lot of lobbyists do, what a lot of fund-raisers do. They try to puff up their role and take credit for something, thinking it was scoring points with Mr. Havenick as a contributor, and then he found out that he stepped in it, and he was mistaken, and, in fact, he was taking credit for something that Mr. Havenick was very unhappy about. So, lo and behold, as Mr. Havenick described, his face dropped, if this all took place.

We are hoping to hear from Mr. McAuliffe directly. I think he ought to be allowed to testify or at least submit an affidavit.

So I use my 5 minutes to make clear to people what has happened in these last 2 days. A decision on the merits that everyone agrees was right—the chairman laughs. I assume he is not arguing the decision should have been made contrary, that they should have forced a casino on the local population that didn't want it. So a decision on the merits that no one has argued was a wrong decision, and those who have made it, those people who actually made it, have told us they made it on the merits without political interference.

Let me ask you again, is there anything different that you know about than what I have just said?

Mr. ANDERSON. No, absolutely not. I have been waiting here patiently as a decisionmaker for the mystery witness or the smoking memo or the affidavit, and I have seen certainly none over the course of these last 2 days.

I did want to say in closing, I talked to my mother last night about these hearings. She saw your chart about the $50 billion. She said, when are we going to get to that issue? That seems to be an important issue.

Mr. WAXMAN. That is a very good question. When are we going to talk about real corruption the way the tobacco industry got the Republican leadership to put in a $50 billion—sneak in a $50 billion tax break for them after they have given so much money?

Any of the other witnesses, Mr. Hartman?

Mr. HARTMAN. I am aware of no influence. Nobody ever asked me to modify what I think we can agree are fairly strong comments and opinions. I saw and know of no undue influence anywhere in the process.

Mr. WAXMAN. Mr. Jaeger, you don't know one way or the other, but I will ask.

Mr. BARRETT. Which is usually the best place to be.

Mr. JAEGER. No, sir, I am not aware of any undue political pressure.

Mr. WAXMAN. Mr. Chairman, I yield back the balance of my time.

Mr. BURTON. You have no more time.

Mr. Waxman, that was a great summary to the jury. Unfortunately the jury has not yet reached a decision. I am sure that they will at some point in the future.

Let me just say my conclusions don't jibe with yours, and I think that we will see how this all turns out. If you look at the memo 1 year after the decision was made by Mr. Skibine, when you look at the tremendous amount of campaign contributions and the benefits that were derived by people who were high up in the Interior Department when they went to work lobbying for the tribes that won, questions still remain.

I will thank our witnesses for being here with us today. We stand in recess until 10 a.m., Wednesday next.

[Whereupon, at 4:45 p.m., the committee was adjourned, to reconvene at 10 a.m., Wednesday, January 28, 1998.]

THE DEPARTMENT OF INTERIOR'S DENIAL OF THE WISCONSIN CHIPPEWA'S CASINO APPLICATION

WEDNESDAY, JANUARY 28, 1998

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The committee met, pursuant to notice, at 11:25 a.m., in room 2154, Rayburn House Office Building, Hon. Dan Burton (chairman of the committee) presiding.

Present: Representatives Burton, Gilman, Hastert, Cox, McHugh, Horn, Mica, Souder, Scarborough, Shadegg, Sununu, Pappas, Snowbarger, Barr, Miller, Waxman, Lantos, Kanjorski, Maloney, Barrett, Norton, Cummings, Kucinich, Blagojevich, and Tierney.

Staff present: Kevin Binger, staff director; Richard Bennett, chief counsel; Judith McCoy, chief clerk; Teresa Austin, assistant clerk/calendar clerk; William Moschella, deputy counsel and parliamentarian; Will Dwyer, director of communications; Ashley Williams, deputy director of communications; Dudley Hodgson, chief investigator; Barbara Comstock, chief investigative counsel; Dave Bossie, oversight coordinator; James C. Wilson, Robert Rohrbaugh, and Uttam Dhillon, senior investigative counsels; Bill Hanka, investigative counsel; Robert Dold and E. Edward Eynon, investigative attorneys; Jason Foster, investigator; Robin Butler, office manager; Carolyn Pritts, investigative administrative assistant; Barrett Davie and Mark Sylvester, investigative staff assistants; Phil Schiliro, minority staff director; Phil Barnett, minority chief counsel; Kenneth Ballen, minority chief investigative counsel; Michael Raphael, David Sadkin, Michael Yang, and Michael Yeager, minority counsels; Harry Gossett and Rick Jauert, minority professional staff members; Ellen Rayner, minority chief clerk; and Jean Gosa, Becky Claster, and Andrew Su, minority staff assistants.

Mr. BURTON. The committee will come to order. I'd like to welcome everyone back to our third day of hearings regarding Secretary Babbitt and the Interior Department's rejection of an Indian gaming application. This application was submitted by three poor Indian tribes in Wisconsin and it was opposed by several very wealthy tribes who are major donors to the Democratic National Committee and party.

Last week, we heard testimony from the chairmen of the three Chippewa tribes who submitted the application. We heard from the owner of the dog track at which the casino was to be located. We heard from four Interior Department officials, both career officials

and political appointees who were involved in the decision. And we heard from both an opponent and a supporter of the casino from the town of Hudson.

We learned a number of important facts during these 2 days. We heard testimony that the chief fund-raiser for the Clinton/Gore campaign, Terry McAuliffe, approached Frank Havenick and told him that he had a hand in killing the casino application. We learned that a Justice Department attorney defending the Interior Department in the lawsuit criticized the Department for not following its own procedures and suggested settling the case.

We learned that the tribes who opposed this casino so strenuously and benefited from the decision to reject it contributed nearly $360,000 to the Democratic National Committee following its rejection. We heard testimony from two witnesses and received affidavits from six more that the head of the Indian Gaming Management Staff, George Skibine, told a group of people at a meeting in Wisconsin that political appointees in the Department were responsible for killing the application.

We then received five affidavits from Interior Department staff who denied that that statement was made. However, because two different meetings were held on that day, questions have been raised as to whether these Interior Department people were at the meeting in question. We are pursuing that to find out more of the details.

We learned from a number of documents, e-mails and deposition testimony that a senior counsel in Secretary Babbitt's office, John Duffy, appears to have been the driving force behind the decision.

Mr. Duffy was a political appointee of Secretary Babbitt. We learned that after the decision to reject the application was made, Mr. Duffy and Mr. Babbitt's chief of staff, Tom Collier, left the Department and went to work for the Minnesota Shakopees, an Indian tribe which was the wealthy Minnesota tribe that benefited the most from this decision.

We learned that in February 1995, the Department reopened the comment period on this application for 2 months at the request of the opposing tribes. They did not inform the applicant tribes until they were confronted by the tribes about it 6 weeks later, which was highly unusual.

We also learned that the Interior Department never met with the applicant tribes to give them a chance to correct any flaws in their application. They kept these tribes that they were supposed to be helping completely in the dark.

This type of consultation is required by law. It flies in the face of the procedures used in considering every other application. To reinforce this very important point, let me just read to you from Mr. Skibine's deposition.

Question, "Here were three poor tribes that had presented an application to the Department of the Interior and you were making a determination as to whether to approve the application or deny the application. If you, as Director of the IGMS staff, identified a particular problem that might lead to the rejection of the application, did you consider it important to communicate that directly to the applicant tribes to give them an opportunity to cure the problem?"

The answer by Mr. Skibine, "Good question. I don't think that I did that on this application, the first application I considered as head of the Gaming Office. If I were to do that again different now, you know, it might be different, it might be something I would consider doing, but at the time I didn't do it."

It appears as though the reason they didn't do this is they didn't want to approve the application.

This week, we will hear from four very important witnesses. We will first hear from Patrick O'Connor, the former Treasurer of the Democratic National Committee, who was the chief lobbyist for the wealthy Minnesota and Wisconsin tribes opposing the application. Mr. O'Connor vigorously lobbied the President, Deputy White House Chief of Staff Harold Ickes, and the head of the DNC Don Fowler, and others to kill the application. In September 1995, after he succeeded in getting the application killed, he wrote a fund-raising letter to his Native American clients. Here is what it said, "As witnessed in the fight to stop the Hudson Dog Track proposal, the Office of the President can and will work on our behalf when asked to do so."

We will hear from Tom Collier, Secretary Babbitt's former chief of staff, and Michael Duffy, the Secretary's chief counsel for the Indian gaming issue, and finally tomorrow we will hear from Secretary Babbitt himself.

We have a great deal of work to do over the next 2 days, so I'll not take any more time right now.

I would like to invite the gentleman from California to make any opening comments he has and then we will hear from our first witness. But before Mr. Waxman makes his comments, let me just say that we may have a motion or two that we will have to vote on at some point during the hearing, and there may be a unanimous consent request, so I will make all of my colleagues aware of that in advance. So if you could stick around, we would appreciate it.

Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman. I want to point out that over the last year or so, we have had a lot of accusations about scandals, but when it came down to it, these accusations were unsubstantiated. I think that is important to point out, because people forget. We had allegations, and pretty colorful ones. We had allegations that the White House kept an enemies list; that it was using the IRS to punish political enemies; and that the White House was a haven for hard drug users.

We also had a pretty big bumper crop of accusations that were pretty sensational during this last year. The White House was accused of altering its videotapes. Former Energy Secretary, Hazel O'Leary, was accused of demanding charitable contributions from Johnny Chung. Maggie Williams was accused of soliciting campaign contributions in the White House. This is a list that I pointed out last week in my opening statement, and I also pointed out that the fact of the matter was that all of these statements were completely untrue.

One statement also was that the White House was selling burial plots at Arlington National Cemetery. That is also untrue. But the reason I raise it is that the accusations get the headlines, but the corrections are buried. On page 10 of the Washington Post, I want

to hold it up, buried over in this little corner, is an article that says "Political Donations Not a Factor in Arlington Waivers, GAO Says." So GAO did a study. They found this accusation was inaccurate. They print a clarification that the accusation was not valid, and it appears on A–10. Where do the attackers' statements that are unsubstantiated appear? Usually on page 1. What we have is investigation by innuendo, and that will, I suspect, continue today.

Let me try to summarize where we are. Mr. O'Connor and others on both sides of the casino controversy lobbied this issue. Both sides made campaign contributions and both tried to exert political influence, not an unusual situation in this city of Washington, where both sides hire lawyers and lobbyists and try their best to win their side. That makes the Hudson Casino controversy like nearly everything else we have seen in Washington.

What would make this issue different is if we had solid evidence that the decision was improperly affected by campaign contributions. But there is no such evidence. Last week, George Skibine, Tom Hartman, and Michael Anderson all testified under oath that the casino decision was made on the merits, without improper political influence.

Hilda Manuel, another senior Interior Department official, provided similar testimony in a sworn deposition, but was not permitted to testify, although she would have told us that she talked to Secretary Babbitt and he told her, you decide, you career people decide this case on the merits. These are the four Interior officials who were most involved in this matter and who would be in a position to know if any wrongdoing occurred. They are the ones we would normally rely on to see if there is substance to the innuendo. And they have all said that the decision was made on the merits.

I realize the chairman is determined to plug away at trying to uncover more innuendo to fuel his theory of wrongdoing, but the facts are that every member of this committee seems to think the decision was a right one. And there is no solid evidence that anything improper happened in the decisionmaking process.

Our committee has conducted hearings, but more than hearings, we have had depositions. These depositions, by the way, compel—under subpoena, some people are compelled to come in, give testimony under oath. The press and the public are not there to witness it. These depositions can take an extraordinarily long period of time. People are deprived of their rights because they are compelled to be there. And sometimes these depositions become public, but sometimes they are not.

We, during the past year, had over 100 witnesses deposed, many of which had already been deposed by the Senate. Most of these witnesses have never been and will never be called to testify. So they won't have a chance to speak in public. Until last week, I had never requested that a witness be deposed. But last week, I asked that we depose Patrick O'Connor, our first witness at this hearing today, so that we could prepare for this hearing.

On Monday, I was informed that the chairman had rejected this request. I, frankly, can't think of a single legitimate reason for the chairman's rejection, especially given the large number of wasteful and redundant depositions the staff had already conducted. Per-

haps my suspicions would not be as great had it not been for Fred Havenick's testimony last week.

At the last moment, before that hearing, we learned that Mr. Havenick would testify that Terry McAuliffe was somehow involved in the Hudson Casino decision. Terry McAuliffe, by the way, was one of the major fund-raisers for the Clinton/Gore campaign. Although that charge has subsequently been reported in the press, no evidence has been produced to substantiate the allegation. The press reported it. No evidence was produced to substantiate it.

In fact, every Interior Department official who was involved in this decision has testified under oath that they were never contacted by Mr. McAuliffe about this issue. The same is true of Mr. Havenick's allegation about his meeting with George Skibine. We have learned since last week that two of the people Mr. Havenick claims were at the meeting now say that they did not attend, and we have received affidavits from five other Department of Interior employees who dispute Mr. Havenick's allegations.

Mr. Chairman, our committee's resources would be better spent focusing on real scandals. Last week, I brought to the attention of the chairman and the members of this committee the facts behind the Gingrich-Lott tobacco scandal. The facts are that the tobacco industry is the biggest contributor to the Republican party; that it hired Haley Barbour, who was the Republican National Committee chairman, as its lobbyist, and that Newt Gingrich and Trent Lott were personally responsible for sneaking a $50 billion tax break for the industry into last year's budget bill. These are facts.

[The chart referred to follows:]

TOBACCO FACTS

1. Tobacco industry hires former RNC Chairman Haley Barbour as their lobbyist.

2. Tobacco industry gives $8.8 million to the Republican party since 1995; the three biggest contributors to the Republican party were all tobacco companies.

3. Speaker Gingrich and Senate Majority Leader Lott insert a secret provision into the budget bill that gives the tobacco industry a $50 billion tax break.

4. With no discussion on the merits, the largest special interest tax break in history is passed.

Mr. WAXMAN. When I raised this issue last week, we were told that my request for subpoenas to look at this scandal—what purports to look like campaign contributions producing favors for the contributors—when we asked for subpoenas, the chairman said he had it under consideration. We haven't received a reply from him.

One deposition that was taken during the course of our investigations was of Vernon Jordan. It had nothing to do with this casino. It had—I don't know what it particularly had a lot to do with. But I read today in the newspaper called the Hill, "House Probe Turns Sights on Jordan."

"Investigators for the House Government Reform and Oversight Committee are scrutinizing the deposition of Washington superlawyer Vernon Jordan to look for specific turns of phrase that might provide new insights into the White House sex scandal."

Well, let's let everybody scrutinize this deposition. Let's make it public. Why should we have depositions taken and not released? I called at a previous meeting to have all those depositions made public. I am going to at the appropriate time ask unanimous consent that this deposition be made public. Let's get the facts on the table. And I would hope to get the facts on the table before the accusations are made, so that we know that accusations are based on facts and not innuendo.

Mr. Chairman, if this is an appropriate time, I would make my unanimous consent request. If the Chair would like me to withhold it because we have other documents we are going to try to make public into the record, I would be pleased to withhold it, whatever his desires may be. But I do want to make this request at some time.

Mr. BURTON. We will entertain that. Have you concluded your remarks?

Mr. WAXMAN. I have.

Mr. BURTON. Let me just make a couple of brief comments regarding some of the issues that have been raised. First of all, the Commerce Department, which I believe you serve on, is investigating the tobacco issue and I think they will continue. Our plate is pretty full right now. That's why we haven't made any comment about that. Nevertheless, we believe it will be looked into by the Congress.

Regarding depositions, almost all the people we have deposed have come voluntarily. We have not had to subpoena, I think, over maybe one or two. There haven't been very many.

The reason we did not agree to have Mr. O'Connor come in for a deposition last week was because he was going to be before the committee today and we didn't think bringing him in here twice was necessary. So that's the reason for that.

Finally, regarding Vernon Jordan, let me make it clear, we are not involving this committee in any way in the scandal that is now engulfing Washington, DC. And the deposition regarding Mr. Jordan that was taken of him dealt with Webster Hubbell and other issues. I have no objection. I don't think our counsel does or anybody on the committee has any objection to making that deposition public. And so at the proper time we will entertain that motion, and I think that when the public sees that deposition, they will find that there was no reference made to any kind of a scandal of

the type that we are talking about here in Washington today. And so with that, let me——

Mr. WAXMAN. Mr. Chairman, may I just make a couple of comments?

Mr. BURTON. Sure.

Mr. WAXMAN. First of all, I serve on the Commerce Committee. That committee is going to look into the merits of legislation for tobacco control. It is not going to investigate the campaign contributions by the tobacco industry that I believe influenced the decision to give them a $50 billion tax break. That is something that ought to be looked at by the committee that is looking at campaign finance abuses. But as I pointed out, this committee doesn't look at abuses when it involves Republicans, only Democrats.

Second, I am pleased that you are going to allow the Vernon Jordan deposition to be made public. But I didn't say that this committee is looking at this campaign—at this scandal at the White House. I am reading from something that your investigators told the Hill newspaper; that they're scrutinizing the deposition of Vernon Jordan to look for specific turns of phrase that might provide new insights into the White House sex scandal.

Let's get that information out there and see if there is any turn of phrase. But that isn't something I have raised. It is something your staff reported to the press. Again, it made a nice headline. "House Probe Turns Sights On Jordan."

Now, of course, when the deposition gets out and is looked at, I don't think we will find another article that says, "Nothing found in Jordan's deposition relating to the so-called sex scandal." But this is the kind of investigation that we are conducting on this committee and I want to point it out.

Mr. Chairman, if it is OK, I would make my unanimous consent request since we have an agreement on it.

Mr. BURTON. In just a moment. We have some other unanimous consents we want to entertain prior to that. But let me just say, I don't know where that rumor came from. To my knowledge, nobody on our staff was instructed or gave any information of the type you are talking about to the Hill newspaper. If you have specific individuals who said anything of that type, if you will bring them to my attention, they will be taken to task. We are not involving ourselves in that issue at all.

I promise you we are not getting into that. That is something that is beyond what I want the scope of this investigation to be involved. I ask unanimous consent that the depositions of John Duffy and Ann Jablonski be included in the record after they have reviewed their depositions. I have no problem with them reviewing their depositions. So without objection, so ordered.

I ask unanimous consent that all documents regarding the St. Croix Meadows Greyhound Racing Park, except any proprietary studies included in volume 14 of the Interior record, be made publicly available, provided that any documents with sensitive personal information such as Social Security numbers and home addresses and phone numbers shall be redacted by committee staff before release. Without objection.

Mr. WAXMAN. Reserving the right to object, and I will object, Mr. Chairman, so that our staffs can look over these documents. As I

understand, there are some problems with the release of some of these documents based on the Solicitor General's concern about it regarding attorney-client issues. So I will at this time object and hope that before the end of this hearing we can work out the problems in this so that we can make as much of it public as possible.

Mr. BURTON. Objection is heard. We will revisit this issue after staff has had a chance to try to work out our differences. If not, we will just have a vote on it. I ask unanimous consent that questioning in the matter under consideration proceed under clause 2(j)2 of House Rule XI and committee rule 14 in which the chairman and ranking minority member allocate time to members of the committee as they deem appropriate for extended questioning, not to exceed 60 minutes for the questioning of Secretary Babbitt, equally divided between the majority and the minority. Without objection, so ordered.

Now, I will entertain your motion.

Mr. WAXMAN. Mr. Chairman, I do want to point out that the Hill article says Republican staffers for the committee headed by Representative Dan Burton say different things. However, the staffers insisted on anonymity, so it is really up to you to talk to your staff to find out if, in fact, they are leaking this information to the press.

Mr. BURTON. I will check with our staff. We will look into it. If we find anybody is making those kinds of comments to the Hill newspaper or any other publication, we will severely correct them. Because that is something we are not going to get into.

Mr. WAXMAN. I ask unanimous consent that the deposition of Vernon Jordan taken by the staff of this committee be made public.

Mr. BURTON. Without objection, so ordered.

Our first panel today consists of Mr. Patrick O'Connor. Would you please come forward, Mr. O'Connor? Would you stand and raise your right hand.

[Witness sworn.]

Mr. BURTON. Please be seated.

Mr. O'Connor, do you have an opening statement you would like to make?

STATEMENT OF PATRICK O'CONNOR, ATTORNEY AND LOBBYIST, O'CONNOR & HANNAN

Mr. O'CONNOR. I would waive that opening statement. It's part of the record. In light of our delay in getting under way, I think it would save some time.

Mr. BURTON. Mr. O'Connor, we will submit your statement for the record. Without objection it is so ordered.

[The prepared statement of Mr. O'Connor follows:]

OPENING STATEMENT OF PATRICK J. O'CONNOR

Mr. Chairman and distinguished Committee Members. Good Morning.

My name is Patrick J. O'Connor and I am a lawyer in Minneapolis, Minnesota. I am 77 years old and I am proud to say that I have been practicing law for over 50 years.

I currently hold an "of counsel" position with the law firm of O'Connor and Hannan, a firm that I co-founded in Minneapolis in 1957. O'Connor and Hannan has offices in Minneapolis and Washington, D.C. Although the firm still bears my name, I am presently employed there solely on a contractual basis. I am no longer a partner or stockholder. I work a limited number of hours on a part-time basis. This was true in 1995 as well.

I began my practice as a trial lawyer, but over time the focus of my practice shifted to representing clients in their dealings with federal, state, and local governments. Initially, I handled matters in the Minnesota state legislature and before various state agencies and local governing bodies. When O'Connor and Hannan's Washington office opened in 1961, I began to concentrate on assisting clients with issues before Congress and the various federal agencies.

I am also proud to say that I have been an active Democrat for over 50 years. I first became active in the Democratic party in 1943 or so when I campaigned for Hubert Humphrey in his race to become Mayor of Minneapolis. Thereafter, I was actively involved on behalf of Democratic candidates in numerous U.S. senatorial and congressional races. I also worked extensively in the presidential campaigns of Adlai Stevenson, John Kennedy, Lyndon Johnson, Hubert Humphrey, George McGovern, Jimmy Carter, Walter Mondale, Michael Dukakis and Bill Clinton.

I became affiliated with the Democratic National Committee in 1956. In 1969, I was elected to the position of Treasurer of the DNC, a position which I held for approximately two years. After I stepped down from my position as Treasurer I continued to work for the DNC in various capacities. This included service on various DNC committees and serving as Chairman of the Democratic House and Senate Council from 1978 to 1982.

In 1992 I became a "trustee" with the DNC. The DNC has since changed the title of these positions to "major supporter." "Trustees" or "major supporters" are selected by the Chairman and the Executive Committee of the DNC. The primary responsibility of the position is fundraising, a subject which all of you no doubt are quite familiar with. As you are well aware, no matter how good a candidate's ideas may be, an effective campaign cannot be managed, and the candidate's message cannot be conveyed to the public, without raising a great deal of money. Fundraising remains an inescapable part of the political landscape for both the Democratic and the Republican parties.

I understand that I am before the Committee today because I assisted in O'Connor and Hannan's representation of the interests of parties who were opposed to the establishment of a casino on the site of the Hudson Dog Track. Before I attempt to answer your questions about my involvement in this matter, I feel that it is important for the Committee to understand some things about the extent of the work I performed on our clients' behalf. These clients were referred to Tom Corcoran, a partner in the O'Connor & Hannan firm, and he had the responsibility for supervising the work, and handling the client billings. I was brought into the matter by Mr. Corcoran in February 1995. Throughout the six months that this matter was handled by O'Connor and Hannan, I was working on a part-time schedule at the firm. The number of hours that I personally spent on this matter was less than one-fifth of the total number of hours expended by the firm, an average of less than ten hours a month during the period February through July. The majority of my work was done in Minneapolis.

I do not bring these facts regarding my limited role to your attention because I am apologetic for, or uncomfortable with, any aspect of my work on the matter. In fact, I am quite proud that O'Connor and Hannan was able to help secure for its clients the outcome they desired. I point out my relatively limited role in this matter solely to furnish the Committee with a context that I feel will be helpful to the Members in both the formulation of questions to me, and the understanding of any answers that I may give. This context may also be helpful in understanding my ability, or inability, to answer some of your questions.

Thank you.

Mr. BURTON. So, Mr. O'Connor, we will now start with questioning from the chief counsel, Mr. Bennett, who is recognized for 30 minutes.

Mr. BENNETT. Good morning, Mr. O'Connor.

Mr. O'CONNOR. And good morning to you.

Mr. BENNETT. Sir, in your opening statement, which is part of the record, you made reference to two different, I guess, aspects of your life. One, that you have essentially been—you started your career as a trial lawyer and the record should reflect the great respect you enjoy as a trial lawyer in the Minneapolis area, and then I believe that around 1961, according to your prepared statement, you began to engage more in activities that would be defined as lobbying, isn't that correct?

Mr. O'CONNOR. Working with clients in terms of their problems with the Congress and with Federal agencies.

Mr. BENNETT. Would you agree, sir, that generally in the parlance, that would be defined as being a lobbyist? I'm not disparaging that, I'm just saying essentially you've been a lobbyist for the past 25 or 30 years, haven't you, sir?

Mr. O'CONNOR. It also included lobbying, yes.

Mr. BENNETT. And then, sir, totally separate from that, you are a former treasurer of the Democratic National Committee; is that correct?

Mr. O'CONNOR. That's correct.

Mr. BENNETT. And I think the record should reflect your great prominence in the Democratic party and I believe now you are a trustee of the Democratic National Committee, is that correct, sir?

Mr. O'CONNOR. I believe they now refer to them not as trustees, but as to——

Mr. BENNETT. Major supporter?

Mr. O'CONNOR. Major supporters.

Mr. BENNETT. With respect to your lobbying activity and your activity as a major supporter of the Democratic party, I think in your prepared statement, you noted that as a major supporter, you have the responsibility for fund-raising, isn't that correct?

Mr. O'CONNOR. That's correct.

Mr. BENNETT. Sir, as a lobbyist, I am sure that you have represented clients on the merits of issues having nothing to do with the matter of political fund-raising; isn't that correct?

Mr. O'CONNOR. Certainly I have represented clients that did not involve fund-raising.

Mr. BENNETT. And also in terms of your great commitment and dedication to your party of which you should be proud, the Democratic party, you had raised money for the Democratic party and have expected nothing in return on many occasions; isn't that correct?

Mr. O'CONNOR. I have raised money for the Democratic party, yes. And I did not—I do not expect any return, if that's the term you want to use.

Mr. BENNETT. And, sir, my question to you, then, is based upon your status in the legal community and your many years of experience both in the law and in politics, you would agree, would you not, that it can become somewhat dangerous if you intertwine the

two too closely, meaning intertwining fund-raising and lobbying for a particular client?

Mr. O'CONNOR. I don't believe—I don't know what you mean by intertwining. But certainly I believe that you can be working on a matter for one client and still be involved if that client has a willingness to make a contribution to a political party or to a Member of Congress.

Mr. BENNETT. But that willingness should not be imposed on that client, wouldn't you agree, sir?

Mr. O'CONNOR. Say that again.

Mr. BENNETT. That willingness, as you said, that willingness should not be imposed on the client as a condition of getting a result; would you agree with that?

Mr. O'CONNOR. No.

Mr. BENNETT. You would agree with that, wouldn't you, sir?

Mr. O'CONNOR. What you are saying——

Mr. BENNETT. I'm sorry. Go ahead.

Mr. O'CONNOR. What you're saying is, I shouldn't, in my capacity of representing a client, impose upon him to make contributions or to force him to make contributions. That is what you are saying?

Mr. BENNETT. Yes, that's correct, sir.

If I can, sir, you have an exhibit book before you, I believe, and I want to make reference to exhibit 356, that being the billing records of your law firm, O'Connor & Hannan to the St. Croix tribe, the client which you represented in this matter, exhibit 356. If you want to take a second to look through those billing records or have those before you, Mr. O'Connor.

[Exhibit 356 follows:]

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400
FAX (202) 466-2198

March 21, 1995

Hon. Lewis Taylor
Chairman, St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

Dear Lewis:

Enclosed please find O'Connor & Hannan's bill for services rendered in February. We are pleased to be of service to you.

If you have any questions, please don't hesitate to call.

Sincerely,

Thomas J. Corcoran

jj
enclosure

EXHIBIT
356

Doc 24297

AA 0000258

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400

FED. ID NO. 52-0825563

INVOICE

March 31, 1995

32594-0001
******

EXHIBIT
356-1

St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

ison Project - Nature of Matter: Dog Track to
ino Conversion

fessional services rendered through February 28, 1995

St. Croix Indian Tribe; new file set up by Tom Corcoran; getting briefed on new client's objectives; research 10 USC sec. 2828(e)(2) legislative language; telephone conference with Tom Corcoran regarding forthcoming meeting with Duffy at Interior regarding creating trust lands at Hudson, Wisconsin dog track for a casino and need to contact Tom Collins; long distance telephone discussion with Tom Corcoran regarding client's meeting on February 8 with Duffy in Oberstar's office; telephone call to Tom Collin's office at Interior; discussions with L. Kitto on February 5 regarding Secretary Babbitt and P. O'Connor's report; discussions with L. Kitto; discussions with P. O'Connor; discussions with assistant to L. Taylor; telephone call to Collins at Interior; draft letter and fax to Collins; reporting to Tom Corcoran; discussions with L. Kitto; discussions with aide to L. Taylor; memorandum to L. Taylor; report to L. Kitto regarding February 8 meeting with Sen. Babbitt's counsel J. Duffy; discussions with P. O'Connor; discussions with L. Kitto; memorandum to Sec. Babbitt's chief of Staff T. Collier; report to Tom Corcoran on Collier; get report on meeting in Oberstar's office from Tom Corcoran; meeting with L. Kitto and T. Ross; review of MIGA record on Hudson project; review file and preparation for meeting with L. Taylor, et al.; meeting with L. Taylor, L. Butler and C. Bearmart; report from L. Kitto regarding Duffy meeting; memorandum to file; strategy development; discussions with staff of U.S. Interior's solicitor's office regarding procedure issue; discussions with F. Ducheneaux, L. Kitto and P. O'Connor regarding procedures issue and MIGA report on Hudson and Congressional letter to J. Duffy and Secretary Babbitt; memorandum to L. Taylor; report on P. O'Connor and T. Collier, Chief of Staff to Sec. Babbitt; discussions with P. Coleman, formerly of U.S. Interior Solicitor's staff; discussions with L. Kitto; meeting with P. Coleman, formerly of U.S. Interior's Solicitor's office; memorandum to file; discussions with L. Kitto; ca.. to H. Ichler; memorandum to file regarding market impact study; discussions with L. Kitto; telephone conference with Tom Corcoran regarding need for a position paper for Interior and why it should not support a gaming casino at the Hudson.

O'CONNOR & HANNAN

COSTS AND EXPENSES INCURRED BUT NOT INCLUDED IN THIS INVOICE WILL BE SUBMITTED AT A LATER DATE

AA 0000259

153

O'CONNOR & HANNAN L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
202 887-1400

FED ID NO. 41-0825580

INVOICE

EXHIBIT
356-2

On 11, 1995 32894-0111 ******
Re: Project - Nature of Matter: Dog Track to

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Wisconsin dog track; discussions with L. Kitto; call to L. Taylor; memorandum to L. Taylor; memorandum to L. Kitto; memorandum to H. Bichler; memorandum to J. McCarthy; review "acquisition checklist," memorandum to J. Jones regarding L. Taylor meeting, discussions with key aide to Cong. Gunderson, J. Frank; memorandum to L. Taylor; memorandum to L. Kitto; memorandum regarding Cong. Gunderson to L. Taylor and copy to L. Kitto; discussions with staff aides to Sen. Feingold and Sen. Kohl; call to H. Bichler; discussions with L. Taylor; discussions with L. Kitto regarding Wisconsin congressional delegation; discussion with L. Taylor; review draft memorandum from L. Kitto; discussions with L. Kitto; develop correspondence for L. Taylor to Minnesota congressional delegation; discussions with BIA officials; discussion with aide to Cong. Obey; discussions with L. Taylor; discussions with L. Kitto; discussions with Congressional aides, discussions regarding market analysis impact on client; discussions with L. Taylor et al.; discussions with L. Kitto; memorandum to L. Taylor regarding Minnesota delegation; memorandum to file; memorandum to L. Kitto; discussions with R. Palmer; discussions with L. Kitto; discussions with key Congressional aides, discussions with L. Kitto; review BIA materials; consulting work performed by L. Kitto for February; discussions with L. Kitto; call to K. Meisner, Office of Solicitor, U.S. Interior Department; teleconference with L. Taylor, H. Bichler and L. Kitto; discussions with BIA officials.

Fees: $7,000.00

Disbursements:

Photocopies	20.40
Long Distance Telephone	116.10
Postage	8.14
Facsimiles	23.00

Total Disbursements: $167.64

Total Amount Due: $7,167.64

AA 0000260

O'CONNOR & HANNAN
COSTS AND EXPENSES INCURRED BUT NOT INCLUDED IN THIS INVOICE WILL BE SUBMITTED AT A LATER DATE.

O'CONNOR & HANNAN L L P
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N W
WASHINGTON D C 20006 3483
(202) 887-1400
FAX (202) 466 2198

April 17, 1995

Hon. Lewis Taylor
Chairman, St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

Dear Lewis:

Enclosed please find O'Connor & Hannan's bill for services rendered in March. We are pleased to be of service to you.

If you have any questions, please don't hesitate to call.

Sincerely,

Thomas J. Corcoran

enclosure

EXHIBIT
356-3

AA 0000261

Doc 3429

O CONNOR & HANNAN, L.L.P
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400

FED. I.D. NO. 41-0825580

INVOICE

April 17, 1995

32594-0001
******

St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

EXHIBIT
356-4

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

dson Project - Nature of Matter: Dog Track to
sino Conversion

ofessional services rendered through March 31, 1995

Telephone conference with Tom Corcoran regarding forthcoming meeting with Duffy of Interior regarding creating trust lands at Hudson, Wisconsin dog track for a sino and need to contact Tom Collin; long distance telephone discussion with om Corcoran regarding client's meeting on February 8 with Duffy in Oberstar's office; telephone call to Tom Collin's office at Interior; telephone call to Collins at Interior; draft letter and fax to Collins; reporting to Tom Corcoran; report to Tom Corcoran on Collier; get report on meeting in Oberstar's office from Tom Corcoran; telephone conference with Tom Corcoran regarding need for a position paper for Interior and why it should not support a gaming casino at the Hudson, Wisconsin dog track; review memorandum from L. Kitto and MIGA; discussions with BIA and Department of Interior officials; call to L. Taylor; work on Wisconsin delegation project; discussions with K. Meisner of Solicitor's Office; discussions with F. Ducheneaux; discussions with L. Kitto; call to L. Taylor and H. Bichler; review documents from H. Bichler; call to P. O'Connor regarding Secretary Babbitt; memorandum to L. Taylor; draft letter for client and Winnebago Chairperson for Wisconsin delegation; discussions with L. Kitto; discussions with P. O'Connor; discussions with BIA officials; memorandum to L. Taylor; memorandum for P. O'Connor to Interior Secretary Babbitt; discussions with L. Kitto; review memorandum from P. O'Connor; memorandum to L. Taylor; discussions with P. O'Connor; discussions with aide to Secretary Babbitt; call to B.J. Parker; discussions with aides to Interior Secretary Babbitt; discussions with L. Kitto; discussions with P. O'Connor; discussions with L. Kitto; discussions with aide to Interior Secretary Babbitt; discussions with F. Ducheneaux; discussions with L. Kitto; discussions with aide to Secretary Babbitt; discussions with P. O'Connor; discussions with Congressional aides; discussion with L. Kitto; discussions with F. Ducheneaux; call to L. Taylor; discussions with aide to Secretary abbitt; discussion with P. O'Connor; discussion with L. Kitto; discussions ith L. Kitto; discussions with NIGC staff; discussions with Congressional aides; discussion with L. Taylor; discussions with L. Kitto; discussion with L.

AA 0000262

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400

FED ID NO. 52-0825580

INVOICE

April 17, 1995 32594-0001 ******
Nation Project - Nature of Matter: Dog Track to

EXHIBIT
356-5

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Taylor following his meeting with G. Skibine, Head of BIA Gaming Office; discussion with L. Kitto; discussion with L. Taylor; meeting at Interior with Tom Corcoran, Larry Kitto and Tom Collier. Meeting at DNC with Truman Arnold and Chairman Don Fowler; meeting with L. Kitto; memorandum to M. Gable of Coopers & Lybrand; memorandum to L. Taylor; discussion with L. Taylor; meeting with L. Kitto, P. O'Connor, T. Collier, Chief of Staff to Interior Secretary Babbitt, and H. Sissmis, P. O'Connor and L. Kitto meetings with various Democratic national campaign organizations (eg. DNC, DSCC); discussion with P. O'Connor; discussion with L. Kitto; discussion with Tom Corcoran regarding meetings at Interior and DNC; review notes from T. Collier meeting; memorandum file; report to L. Taylor; memorandum to L. Taylor; additional discussion with L. Taylor regarding Coopers & Lybrand impact analysis for Ho Chunk Tribe; report to L. Taylor regarding meeting with DNC Chairman D. Fowler; discussion with L. Kitto; discussion with P. O'Connor; memorandum to L. Kitto regarding T. Collier meeting; discussion with L. Kitto regarding coordination impact study among St. Croix Tribe Mid Locs Tribe and Ho Chunk Tribe involving Coopers & Lybrand analysis; discussions with BIA officials; discussions with House Native American Subcommittee staff aides; discussions with L. Kitto regarding Democratic Governor with dog track problems contacting Interior Secretary Babbitt; discussions with aide to Cong. Solomon, Chairman of House Rules Committee; report to L. Kitto; discussions with aides to NIGC; discussions with F. Ducheneaux; discussions with H. Quigni; discussions and meetings with key Congressional staff assistants regarding implications of Cong. Solomon/Cong. Torricelli legislation on Hudson and off-reservation projects generally; discussions with NIGC staff; call to L. Taylor for a report; discussions with L. Taylor; discussions with L. Kitto; discussions with Congressional staff regarding Solomon/Torricelli legislation; meeting with aide to Cong. Solomon; discussions with L. Kitto; meeting with aide to Interior Secretary Babbitt; discussions with L. Taylor; discussions with G. Pitchlyn; discussions with L. Kitto; discussions with aides to Cong. Solomon; discussions with BIA Congressional liaison aides; memorandum regarding Solomon/Torricelli legislation to L. Taylor and L. Kitto; review Solomon/Torricelli legislation with partners; discussions with Congressional staff; review L. Kitto's m

For services: $7,500.00

AA 0000263

O'CONNOR & HANNAN

COSTS AND EXPENSES INCURRED BUT NOT INCLUDED IN THIS INVOICE WILL BE SUBMITTED AT A LATER DATE

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400

FED ID NO 47-0825580

INVOICE

11 17, 1995 32594-0001 ******
son Project - Nature of Matter: Dog Track to

EXHIBIT
356-6

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

ibursements:

	Photocopies	20.40
	Long Distance Telephone	88.55
	Facsimiles	31.00
31/95	Larry Kitto - Hotel, Airfare, Meals, Parking, Tips, and Cab fare (2/07/95 - 3/15/95)	1752.07

tal Disbursements: $1,892.02

tal Amount Due: $9,392.02

O'CONNOR & HANNAN
COSTS AND EXPENSES INCURRED BUT NOT INCLUDED IN THIS INVOICE WILL BE SUBMITTED AT A LATER DATE

O'CONNOR & HANNAN, L L P
ATTORNEYS AT LAW

SUITE 800
99 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20006-3483
(202) 887-1400
FAX (202) 466-2198

May 9, 1995

EXHIBIT
356-7

Hon. Lewis Taylor
Chairman, St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

Dear Lewis:

Enclosed please find O'Connor & Hannan's bill for services rendered in April. We are pleased to be of service to you.

If you have any questions, please don't hesitate to call.

Sincerely,

Thomas J. Corcoran

jj
enclosure

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE NW
WASHINGTON, D.C. 20006-3483
(202) 887-1400

FED ID NO 52-0825540

May 5, 1995

INVOICE

32594-0001
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St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

EXHIBIT
356-8

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

dson Project - Nature of Matter: Dog Track to
sino Conversion

ofessional services rendered through April 30, 1995

Meeting with T. Glidden of Department of Interior Insular Affairs; review letter from J. Diffy, aide to Sec. Babbitt, to Sen. Wellstone; discussions with BIA officials; discussions with L. Kitto; discussions with L. Kitto; memorandum L. Kitto regarding letter for L. Taylor and J. Jones; discussions with aides to Members of the Wisconsin Congressional delegation; discussions with L. Collette; discussions with aides to Members of Congress from Wisconsin; discussion with Tom Corcoran regarding need to call White House on Hudson Dog Track. Discussion with Larry Kitto; discussions with L. Kitto; discussions with F. Ducheneaux; report on April 6 meeting of L. Kitto and L. Taylor; discussions with P. O'Connor regarding Sen. D'Amaro's involvement in Hudson Dog Track Company and need to communicate this fact to White House and Sec. Babbitt of Interior Department; call to Loretta Avent at White House. Report to Tom Corcoran; meeting with M. Colopy; discussions by teleconference with m. Colopy and P. Babcock of Washington Post; discussions with F. Ducheneaux, L. Taylor and L. Kitto regarding the Washington Post investigation, development of Hudson projects newspaper clips for Washington Post reporter; review documents from L. Taylor, review of Ho Chuck Nation resolution approving Hudson project and Oneida's statement of opposition; review public statements regarding Milwaukee baseball stadium statements by tribes involved in Hudson project application; preparation of memorandum and delivery of same and local newspaper clips regarding Hudson project to Washington Post call to White House to Loretta Avent's office; discussions with L. Kitto; review MIGA file for September 14, 1994 involving studies by Dr. Murray and Arthur Anderson, Inc.; review file on "Finding of No Significant Impact"; discussions with aide to Interior Secretary Babbitt; discussions with L. Kitto; draft letter for Sen. Wellstone; memorandum to L. Kitto; discussion with Tom Corcoran regarding fax to Loretta Avent. Drafting and sending fax to Ms. Avent; discussions regarding White House with P. O'Connor; memorandum to white House aide L. Avert for P. O'Connor; memorandum to L. Taylor; memorandum to L. Kitto in Green Bay, Wisconsin; discussions with H. Sibbison, deputy to Interior Counselor J. Duffy; letter and

O'CONNOR & HANNAN

FEES AND EXPENSES INCURRED BUT NOT INCLUDED IN THIS INVOICE WILL BE SUBMITTED AT A LATER DATE

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400

FED ID NO. 41-0825580

INVOICE

3 1995 32594-0001 ******
Date Project - Nature of Matter: Dog Track to

EXHIBIT
356-9

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

documents to H. Sibbison and Counselor Duffy; discussions with L. Kitto; discussions with BIA regarding September 14, 1994 correspondence with Minnesota tribes; discussion with Larry Kitto regarding setting up appointments with D.N.C. and White House; long distance calls to Loretta Avent office regarding my decision to raise the Hudson Race Track issue with President Clinton in Minneapolis if I did not hear from her. Meeting with the President on the Hudson Race Track issue with Bruce Lindsey and Linda Moore of the White House staff answering call from Loretta Avent and her staff regarding Hudson Dog Track. Reporting to Larry Kitto; plan strategy for final week before T. Collier deadline for "consultation" ends at Department of Interior, memorandum fo J. [illegible]dget and Mr. Epstein, top aides to Senator Wellstone, discussions with Larry Kitto; meeting in St. Paul with Larry Kitto and discussing meeting on Friday with Don Fowler of the D.N.C. Long distance telephone conversation with Lora Hartigan of the Presidential Committee to Re-elect; discussion with Pat O'Connor regarding his meeting with President Clinton and impact of L. Avert of President's staff. arrangements for Washington meeting this week for Tribal Indians from Wisconsin and Minnesota. meetings with staff aides to House and Senate hearing committees, discussions with M. Epstein top aide to Senator Wellstone several discussions with H. Sibbison, aide to Secretar Babbitt. discussions with G. Skibine; discussions with Larry Kitto, discussions with T. Krewjewish. M. Butterfield of Ho Chunk Tribe, discussion with S. Liable of Peat Marwick. discussion with M. Gaber of Coopers & Lybrland, call to L. Taylor. discussions with aides to Interior Security Bobbitt. discussions with aides to Senator Wellstone; calls to the White House and the D.N.C. regarding tribe's meeting with Chairman Fowler. Call to Tom Corcoran regarding same. Call to Larry Kitto in Washington, D.C; discussions with M. Epstein top aide to Senator Wellstone. discussions with H. Sibberson aide to Secretary Babbitt, call to L. Taylor. discussions and memorandum to Coopers & Lybrand, discussions and memorandum to Peat Marwick, strategy discussions with M. Epstein legislative director for Senator Wellstone and Mr. Butterfield, tribal attorney for Ho Chunk Nation. discussions with Larry Kitto; meeting with Larry Kitto and David Mercer at D.N.C. discussing contributions program for the Indians; Meeting with Chairman Fowler, David.

e ces: $7,500.00

AA 0000287

O'CONNOR & HANNAN

COSTS AND EXPENSES INCURRED BUT NOT INCLUDED IN THIS INVOICE WILL BE SUBMITTED AT A LATER DATE

O'CONNOR & HANNAN L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400

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INVOICE

April 8, 1998 — 32594-0001 — ******
Nixon Project - Nature of Matter: Dog Track to

EXHIBIT
356-10

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Disbursements:

Photocopies	50.60
Long Distance Telephone	5.48
Postage	33.52
Word Processing	90.00
Facsimiles	94.00

Total Disbursements: $283.60

Total Amount Due: $7,783.60

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400
FAX (202) 466-2198

June 27, 1995

EXHIBIT
356-11

Hon. Lewis Taylor
Chairman, St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

Dear Lewis:

Enclosed please find our invoice for legal services rendered for May 1995.

If you have any questions, please don't hesitate to call.

Warm personal regards.

Sincerely,

Thomas J. Corcoran

tj
enclosure

Doc 24750

ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400

FED. I.D. NO. 47-0825580

INVOICE

June 27, 1995

32594-0001
******

EXHIBIT
356-12

St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

son Project - Nature of Matter: Dog Track to

fessional services rendered through May 31, 1995

Report to Tom Corcoran regarding Friday meeting at D.N.C. Telephone conference with D. Mercer regarding appointment at White House with Harold Ickes; Finish briefing of T. Corcoran on Friday D.N.C. meeting.
Calls to D.N.C. regarding White House appointment; Long distance telephone conference with Larry Kitto.
Telephone calls to D. Mercer at D.N.C.; Report to Larry Kitto regarding Chairman Fowler's memorandum to Harold Ickes; discussions with P. O'Connor and L. Kitto regarding delivery of materials to White House as requested by D. Fowler, DNC Chairman; discussions regarding meeting with White House Deputy Chief of Staff H. Ickes; discussions with F. Ducheneaux; discussions with aide to Senate Indian Affairs Committee; discussions with Department of Interior officials.
Draft letter to Harold Ickes at White House setting forth reasons to approve creating trust lands for Casino at the Hudson, WI dog track; Discussion with Larry Kitto checking on facts set forth in Ickes letter.
Discussions with P. O'Donnell; review memorandum for White House Deputy Chief of Staff H. Ickes; discussions with P. O'Connor; letter and memorandum to H. Ickes; memorandum to L. Kitto; memorandum to L. Taylor; memorandum to DNC Chairman Fowler and D. Mercer; discussions with F. Ducheneaux; memorandum to P. O'Connor; discussion with Tom Corcoran and editing letter to Harold Ickes; Arranging distribution of letter.
Discussions with F. Ducheneaux; discussions with L. Kitto; discussions with BIA officials; discussion with Tom Corcoran; Long distance telephone conference to Tom Snyder briefing him on problem; Fax to Snyder; Call to D.N.C.

AA 0000270

ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W
WASHINGTON D.C. 20006-3483
(202) 887-1400

FED. I.D. NO. [illegible]

INVOICE

e 27, 1995 32594-0001 ******
ion Project - Nature of Matter: Dog Track to

EXHIBIT
356-13

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Long distance discussion with David Mercer regarding follow-up with Harold Ickes; Discussion with Tom Corcoran regarding follow-up with congressional delegations; discussions with P. O'Connor regarding White House involvement in our case at Interior Department; discussions with L. Kitto; review materials from L. Kitto and P. O'Connor; memorandum to L. Kitto.
Meeting with tribal representatives; discussions with F. Ducheneaux; discussions with partners regarding White House actions to stop Hudson project; discussions with BIA officials; discussions with L. Kitto; call to Larry Kitto regarding hearing advising the tribes and Minnesota and Wisconsin delegations regarding my letter to Harold Ickes; Call to David Mercer to get update.
Telephone conference to D. Mercer of D.N.C. regarding status report on meeting with Harold Ickes; Call to Tom Corcoran regarding sending accountant's report to Harold Ickes; discussions with P. O'Connor regarding Deputy White House Chief of Staff H. Ickes; discussions with L. Kitto; memorandum to key White House aides regarding client issues.
Review of Peat Marwick report; letter and memorandum and Peat Marwick report to H. Ickes, Deputy White House Chief of Staff; discussions with White House aides; memorandum to L. Taylor; memorandum to L. Kitto for MIGA; report to L. Kitto regarding President Clinton's comments about "our friends" and racetrack issue; get report from Tom Snyder that he talked to President Clinton regarding status of matter. Report to D. Mercer, Tom Corcoran; Call to John Sutton at Harold Ickes' office; Report to Larry Kitto.
Discussion with David Mercer regarding delay in getting appointment with Harold Ickes.
Meeting with Frank D. and review Wall Street Journal article on Delaware North; Meeting with Tom Corcoran and draft proposed letter to be sent to Minnesota delegation to Harold Ickes regarding Hudson dog track; Long distance telephone conference with Larry Kitto arranging meeting with Minnesota delegation on Wednesday, May 24 in

AA 0000271

ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400

FED. ID NO. 41-0825[illegible]

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27, 1995 32534-0001 ******
on Project - Nature of Matter: Dog Track to

EXHIBIT
356-14

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Washington, D.C.; Dinner meeting with David Mercer of the D.N.C.; Report on cause of delay in meeting with Harold Ickes; discussions with P. O'Connor regarding White House strategy and action with Deputy Chief of Staff H. Ickes; discussions with L. Kitto; telephone conference with L. Kitto and P. O'Connor; discussions with P. Taylor of Ducheneaux and Taylor Associates; draft letter for Minnesota Congressional Delegation and send to H. Ickes of White House staff; discussions with P. O'Connor and L. Kitto regarding next meeting, plans and actions.
Preparation of letter for Minnesota Congressional Delegation to send White House aide Harold Ickes, discussion with Pat O'Connor, discussion with Larry Kitto, discussion with T. Krazewiski of Ito-Chunk Nation, report to Larry Kitto; meet with Larry Kitto and Terry MacAuliffe explaining our story.
Trip to the Committee to Re-Elect; (Terry MacAuliffe); Conference with Chairman of National Finance Committee asking him to agree to call Harold Ickes and arrange appointment for Indians; Dinner with Al Gore; Conference with Peter Knight and David Strauss regarding Indian problem regarding Hudson dog track; discussion with Larry Kitto, discussion with Pat O'Connor, delivery of proposed letter by Minnesota Congressional Delegation to Larry Kitto and aides to Congressman Wellstone, Congressmen Oberstar, Vento and Sabo, preparation of draft letter for Senators Daschle and Kerrey for correspondence with White House Deputy Chief of Staff H. Ickes, memorandum to Larry Kitto, discussion with BIA officials.
Discussion with Pat O'Connor, discussion with Larry Kitto, discussions with Pat O'Connor with aide to Vice President Gore, discussion with aide to Clinton/Gore Re-election Committee, finalize letters for Senators Daschle and Kerrey to send to Interior Secretary Babbitt, draft of letters for tribal leaders to send to Secretary Babbitt; reporting to Tom Corcoran on discussions with Peter Knight, David Strauss at Al Gore dinner; Report on meeting with Terry MacAuliffe.

AA 0000272

O'CONNOR & HANNAN

[illegible] THIS INVOICE WILL BE SUBMITTED AT A LATER DATE

166

ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N W
WASHINGTON D C 20006-3483
(202) 887-1400

FED ID NO 41-0825581

INVOICE

e 27, 1995 32594-0001 ******
ion Project - Nature of Matter: Dog Track to

EXHIBIT
356-15

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Discussion with E. Ducherneaux, discussions with aides to House Natural Resource Committee, discussions with T. Glidder, majority counsel to House Subcommittee on Native Americans, discussion with aide to COngressman D. Young, discussion with aide to Congressman Gallegly.
Discussion with Larry Kitto. Discussion with Pat O'Connor. Discussion with David Strauss, aide to Vice President Gore. Memorandum to F. Ducheneaux. Discussion with F. Ducheneaux regarding Delaware North.
Long distance discussion with Tom Corcoran regarding Milbur Wiz Journal article regarding dog track, Read fax; memorandum from T. Krazewski of Ho-Chunk Nation. Memorandum to Don Fowler/David Mercer Memorandum to Tom Collier. Memorandum to H. Ickes/John Sutlon. Memorandum to L. Taylor. Discussion with Larry Kitto. Discussion with Pat O'Connor. Meetings, discussions and correspondence involving L. Kitto, client, agency representation and Minnesota Members of Congress and their staff assistants on this matter.

Total Services: $7,[illegible].00

AA 0000273

O'CONNOR & HANNAN

[illegible]

ATTORNEYS AT LAW

SUITE 900
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 861-1400

FED. ID NO. 31-0825580

INVOICE

[illegible], 1995 32594-0001 ******
[illegible] Project - Nature of Matter: Dog Track to

EXHIBIT
356-16

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Disbursements:

	Photocopies	111.20
	Long Distance Telephone	40.08
	Postage	3.12
	Facsimiles	88.50
2[illegible]	S LARRY KITTO - expense for airfare, hotel, parking, meals, etc. (4/18-5/24/95	1380.00

Total Disbursements: $1,622.90

Total Services and Disbursements: $9,122.90

**********Statement of Account**********

[illegible]ANCE DUE FROM PREVIOUS STATEMENT	7783.60
[illegible]S PAYMENT(S)	(7783.60)
[illegible]ANCE FORWARD	.00
[illegible]RRENT INVOICE	9122.90
[illegible]ANCE DUE	$9,122.90

AA 0000274

O'CONNOR & HANNAN

[illegible] DISBURSEMENTS ACCRUED BUT NOT INCLUDED IN THIS INVOICE WILL BE SUBMITTED AT A LATER DATE 168

O'CONNOR & HANNAN, L L P
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N W
WASHINGTON D C 20006-3483
(202) 887-1400
FAX 202) 466-2198

EXHIBIT
356-17

July 11, 1995

Hon. Lewis Taylor
Chairman, St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

Dear Lewis:

Enclosed please find our invoice for legal services rendered for June 1995.

If you have any questions, please don't hesitate to call.

Warm personal regards.

Sincerely,

Thomas J. Corcoran

jj
enclosure

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400

FED. ID NO. 41-0825580

July 11, 1995

INVOICE

32594-0001
******

EXHIBIT
356-18

St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

...dson Project - Nature of Matter: Dog Track to

...ofessional services rendered through June 30, 1995

Meeting with L. Kitto; memorandum to L. Taylor regarding appointment with Secretary Babbitt; memorandum to White House aides Ickes, Sutton, Avert; memorandum to DNC; meeting with L. Kitto and S. Dacey regarding Wisconsin tribes and Wisconsin Congressional delegation. Conference with Tom Corcoran and call to Senator McCain to set up a meeting concerning a contested application for certification at the Department of Interior; discussions with L. Kitto; discussions with P. O'Donnell regarding Senator McCain; memorandum to P. O'Donnell; discussions with P. O'Connor; discussions with D. Mercer of DNC, memorandum to Vice President Gore; memorandum to T. MacAulliff of Clinton/Gore Re-Elect Committee.

Long distance telephone conference to T. Corcoran regarding Terry MacAuliffe arranging appointment with Harold Ickes; Discussion regarding getting City Council at Hudson to take legal action opposing casino; discussions with P. O'Donnell regarding Senator McCain; discussions with Democratic National Committee officials; discussions with P. O'Connor; discussions with BIA officials; discussions with L. Kitto; memorandum to L. Kitto; report to L. Taylor regarding meeting with Senator McCain on June 8; discussions with F. Ducheneaux; discussions with MIGA regarding Senator McCain meeting; discussions with Ho Chunk representatives regarding meeting with Senator McCain; discussions with partners regarding City of Hudson involvement and representation.

Visit with Senator McCain, Frank Ducheneaux and Tom Corcoran concerning possible infringement of unseemly elements into the Indian gaming situation in Minnesota; review file; discussions with P. O'Donnell; discussions with F. Ducheneaux; meeting with Senator McCain, F. Ducheneaux and P. O'Donnell; report to L. Kitto; report to L. Taylor; discussions with L. Kitto regarding Congressman Sabo; discussions with White House Chief of Staff Leon Panetta; review memorandum from L. Kitto.

O'CONNOR & HANNAN
COSTS AND EXPENSES INCURRED BUT NOT INCLUDED IN THIS INVOICE WILL BE SUBMITTED AT A LATER DATE

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON D.C. 20006-3483
(202) 887-1400

FED. I.D. NO. 47-0825581

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y 11, 1995 32594-0001 ******
ison Project - Nature of Matter: Dog Track to

EXHIBIT
356-19

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Getting update from T. Corcoran regarding meeting with Senator McCain and with Hanew developments.
Discussions with aides to Senator McCain; discussions with several aides on the White House staff, including aides to Leon Panetta and Harold Ickes; discussions with L. Kitto; memorandum to L. Taylor; discussions with L. Taylor; discussions with aides at Department of Interior.
Discussions with F. Ducheneaux; discussions with aide to Senator McCain, Chairman of the Senate Indian Affairs Committee; discussions with BIA officials; discussions with L. Kitto; discussions with representatives of Ho Chunk Nation regarding Hudson project; long distance telephone conference with Larry Kitto regarding meeting in Hudson, Wisconsin; Checking on letter from Congressmen and Senators to White House and Interior. Discussion regarding support to be given to Committee to Re-elect and D.N.C.; Discussion with Tom Corcoran.
Meeting with tribal leaders at Hyatt Hotel on Capitol Hill with L. Kitto; meeting involving tribal leaders and L. Kitto with Tom Foley, incoming Commissioner to the National Indian Gaming Commission; discussions with aides to Senator McCain; discussions with BIA officials.
Discussions with L. Kitto; discussions with tribal representatives of the Minnesota tribes; work on the tribal leaders' meeting with Interior Secretary Babbitt; memorandum to L. Kitto.
Memorandum to L. Kitto; discussions with L. Kitto; discussions with aides to members of the Minnesota delegation in Congress.
Discussions with partners regarding status of client issue; discussions with BIA officials; discussions with aides to Interior Secretary Babbitt; discussions with L. Kitto; discussions with aides to Senator McCain. Meetings, discussions and correspondence involving Larry Kitto, client, agency representation and Members of Congress and their staff assistants on this matter.

Total Services: $7,500.00

O'CONNOR & HANNAN

FEES AND EXPENSES INCURRED BUT NOT INCLUDED IN THIS INVOICE WILL BE SUBMITTED AT A LATER DATE

AA 0000277

O'CONNOR & HANNAN, L L P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON D.C. 20006-3483
(202) 887-1400

FED ID NO. 41-0825580

INVOICE

ly 11, 1995 32594-0001 ******
dson Project - Nature of Matter: Dog Track to

EXHIBIT
356-20

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

sbursements:

Photocopies	25.80
Long Distance Telephone	4.03
Postage	34.15
Word Processing	33.75
Deliveries	37.53
Facsimiles	50.00
6/30/95 PATRICK E. O'DONNELL - out of pocket expenses	7.50
Total Disbursements:	$192.76
Total Services and Disbursements:	$7,692.76

**********Statement of Account**********

BALANCE DUE FROM PREVIOUS STATEMENT	9122.90
LESS PAYMENTS	.00
BALANCE FORWARD	9122.90
CURRENT INVOICE	7692.76
BALANCE DUE	$16,815.66

AA 0000278

O'CONNOR & HANNAN, L L P
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N W
WASHINGTON D C 20006-3483
202 887 1400
FAX 202 466 2198

August 9, 1995

EXHIBIT
356-21

Hon. Lewis Taylor
Chairman, St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

Dear Lewis:

Enclosed please find our invoice for legal services rendered for July 1995.

If you have any questions, please don't hesitate to call.

Warm personal regards.

Sincerely,

Thomas J. Corcoran

JJ
enclosure

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400

FED. I.D. NO. 41-0825582

August 9, 1995

INVOICE

32594-0001
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St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

EXHIBIT
356-22

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

son Project - Nature of Matter: Dog Track to

fessional services rendered through July 31, 1995

Discussions with L. Kitto; discussions with P. O'Connor; discussions with aides to House of Representatives Native American Subcommittee. Discussions with L. Kitto; review story in Minneapolis Star Tribune regarding Hudson project; discussions with Bureau of Indian Affairs officials, discussions with legislative aides to members of the Wisconsin Congressional delegation and the Minnesota Congressional delegation.
Discussions with L. Kitto; discussions with Dan Theno of Fort Howard Corporation in Wisconsin; discussions with aides to Senate Indian Affairs Committee and House Subcommittee on Native Americans.
Discussions with L. Kitto; discussions with Frank Ducheneaux; development of strategy on Hudson involving contact with George Skivine, key official in the Gaming Office at the Department of Interior in order to get status report for client.
Discussions with L. Kitto; work on Hudson project with Congressional aides from Minnesota and Wisconsin; discussions with BIA officials meeting with aides to Senator McCain regarding Department of Justice inquiry; discussions with aides to House Native American Subcommittee.
Discussions with L. Kitto; discussions with aides to House Native American Subcommittee; discussions with partners regarding further involvement of White House and Secretary Babbitt, discussions with Frank Ducheneaux regarding George Skivine, head of the relevant agency within the Interior Department involved with the Hudson project; discussions with aides to Minnesota Congressional delegation, meeting with Larry Kitto in Minneapolis; Discussion regarding need to go to Hudson, WI and visit with city council members and city attorney. Discussion regarding necessity to follow-up with Harold Ickes at the White House, D. Fowler at DNC and Terry Mac at the Committee to Re-elect, outlining fund raising strategies.

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400

FED ID NO. 52-0825580

INVOICE

Jan 9, 1995 32594-0011 ******
For: Project - Nature of Matter: Dog Track

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Discussions with P. O'Connor; discussions with L. Kitto; discussions with aides to Congressman Longley; discussions with aide to Congressman Metcalf; memorandum to L. Kitto.
Memorandum to Lewis Taylor; memorandum to L. Kitto; discussions with BIA public information officials; discussions with aides to BIA gaming office; discussions with Lewis Taylor; meeting with Tim Glidden, Counsel to the House Native American Subcommittee.
Discussions with P. O'Donnell; memorandum to Don Fowler, Chairman of the Democratic National Committee; meeting with aides to Congressman Jack Metcalf and Congressman Jones; long distance discussions with Chairman Fowler regarding Department of Interior decision to reject an application for a casino at the Hudson, WI dog track; Sending faxes to Chairman Fowler; Reporting to T. Corcoran and L. Kitto regarding criteria voiced by opposition.
Briefing Larry Kitto on my conversations with Chairman Fowler of the DNC; Discussion regarding thank you letters to White House and members of the congress; Discussion regarding fund raising; memorandum to L. Kitto; discussions with aide to House Native American Subcommittee; letter to Senator McCain regarding favorable Hudson decision for client.
Discussions with L. Kitto; review draft thank-you letters for tribal leaders; review memorandum from L. Kitto; discussions with general counsel of Senate Indian Affairs Committee; review ruling by Interior Department declining request for certification via assistance given by Senator McCain; finish thank-you letter to Senator McCain for his assistance thereon.
Discussions with Pat O'Connor regarding follow up on Hudson project; discussions with L. Kitto; meeting with Lewis Taylor, L. Kitto and tribal representative.
Meeting with tribal leaders regarding S. 487 and scheduled hearing by Senator McCain of the Senate Committee on Indian Affairs today. July 25; discussions with L. Taylor; discussions with L. Kitto to get debriefing on today's hearing on the Senate hearing; discussions with L. Kitto regarding plan of action for S. 487 and during mark up by committee and during August; memorandum to Lewis Taylor.

AA 0000281

O'CONNOR & HANNAN
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400

FED. I.D.NO. 41-0825580

INVOICE

ust 9, 1995 32594-0001 ******
ion Project - Nature of Matter: Dog Track to

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Discussions with L. Kitto; discussions with aides to Senate Committee on Indian Affairs regarding timing and policy issues relative to mark up of Senate bill for S. 487; discussions regarding S. 487 with aides to Senators Coverdell, Thomas and Hatch; discussion with KLarry Kitto regarding arranging meeting in Washington, D.C. with senators; discussion regarding status of work up on Indian legislation.
Discussion with Larry Kitto, review of reports on July 25 hearing regarding S487 memoranda to Lewis Taylor, call to Lewis Taylor, additional memoranda to Lewis Taylor, discussion with aids to Senate Indian Affairs Committee, discussions with aids to Sen. Coverdell, Sen. Thomas, Sen. Hatch and Sen. Nickles, meeting with Tom Corcoran and call Senator McCain for appointment with Lewis Taylor, Chairman of St. Croix Tribe of Wisconsin, on S. 487, hopefully prior to scheduled markup. Receive word that he will try to accommodate during week of July 31.
Discussion with T. Corcoran regarding need to set up appointment with Senators Conrad, Dorgan, and Inouye, prepare correspondence regarding same; telephone conferences making appointments; discussions with Larry Kitto, discussions with Pat O'Connor, discussions with Pat O'Donnell, discussions with aids to Senate Indian Affairs Committee, discussion with legislative aid to Sen. Mikulski, discussion with legislative aids to Sen. Domenici, Sen. Kassebaum, Sen. Thomas, Sen. Coverdell, Sen. Hatch, Sen. Nickles, and Sen. Dorgan, follow up discussions to arrange meeting for client on August 3 at 3:00 p.m. Ryan Leonard aid to Sen. Nickles, follow up discussion with Rob Foreman aid to Sen. Hatch for meeting on August 3 at 2:30 p.m.
Calls to Corcoran and Kitto working on appointment in Washington with U.S. Senators; faxes to Senators Conrad, Dorgan and Inouye; discussion with Larry Kitto, discussions with Larry Kitto and Lewis Taylor regarding the development of the Congressional meeting schedule for Monday, July 31 and discussion with legislative aids to

EXHIBIT
356-24

AA 0000282

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400

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INVOICE

st 9, 1995 32594-0001 ******
on Project - Nature of Matter: Dog Track to

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Sen. Mikulski Sen. Domenici, Sen. Thomas, Sen. Coverdell discussion with Larry Kitto regarding this week's meeting with Sen. Simon, discussions with aids to Senate Indian Affairs Committee, fax to Lewis Taylor memorandum from Lewis Taylor, work and representation of tribe by Larry Kitto during month of July involving meetings and discussions with client representatives, discussions research and meetings with aids and members of the Minnesota Congressional delegation, discussions and representation before agencies of U.S. Government on behalf of client.

Total Services: $7,500.00

ursements.

Photocopying, postage, messengers, local transportation, courier charges and miscellaneous out-of-pocket expenses	$633.95
Total Services and Disbursements:	$8,133.95

EXHIBIT
356-25

AA 0000283

O'CONNOR & HANNAN

[illegible] 177

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
999 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400
FAX (202) 466-2198

September 15, 1995

Hon. Lewis Taylor
Chairman, St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

Dear Lewis:

Enclosed please find our invoice for legal services rendered for August 1995.

If you have any questions, please don't hesitate to call.

Warm personal regards

Sincerely,

Thomas J. Corcoran

tjj
enclosure

EXHIBIT
356-26

Doc 24750

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400

FED. ID NO. 41-0825582

INVOICE

September 14, 1995

32594-0002
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St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Indian Gaming Regulatory Act

Professional services rendered through August 31, 1995

Discussions with P. O'Donnell regarding meeting scheduled with Senator McCain, Chairman of the Senate Committee on Indian Affairs, set for Friday, August 4; discussions with Lewis Taylor and his representatives regarding the addition to the Congressional meeting schedule for this week; discussions with L. Kitto; discussions with aides to Senators Murkowski, Kassebaum, Thomas and Coverdell; discussions with L. Kitto; preparation of schedule IGRA meetings in Washington this week for client; preparing for meeting with Senator Conrad on Wednesday and Thursday; Call to Senator Conrad's appointment secretary; Reviewing bill and discussion regarding possible amendments; Trip to Washington; Discussion with Larry Kitto; Indian matter regarding racetrack gaming and the Hudson dog track. Telephone discussion and meeting with senior White House staff and POTUS re expansion of gaming and the dog track and opposition to so doing.
Meeting with Tom Corcoran to prepare for gathering of Minnesota and Wisconsin tribes with Senator McCain to discuss support for the National Indian Gaming Regulatory legislation; discussions with P. O'Connor; discussions with L. Kitto; discussions with aides to Senators Kassebaum, Thomas, Domenici, Murkowski, Coverdell, Dorgan and Conrad; review memorandum from L. Kitto; meeting with Lewis Taylor for dinner and discussion purposes; call to Senator Dorgan's office; Discussion with T. Corcoran regarding Slate Gordon Amendment; Discussion with Larry Kitto regarding who will speak at the Senator Conrad meeting; Read L. Kitto memorandum on the Indian Gaming legislation trip to the Hill m eeting with Senator Conrad; Strategy discussion at dinner with clients.
Meeting with Larry Kitto reviewing gaming bill and amendments; Discussion regarding amendments clients oppose; Discussion regarding Skip Humphrey amendments; Calls from Senator Dorgan's office and Senator Inouye's office changing time of appointments; Mee ting with Senator Dorgan and clients; Meeting with Senator Inouye and clients;

EXHIBIT 356-22

O'CONNOR & HANNAN
ATTORNEYS AT LAW
SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
202 887-1400
FED. ID NO. 41-0625580

INVOICE

October 14, 1995 32594-0001 ******
Indian Gaming Regulatory Act

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

discussions with L. Kitto; discussions with P. O'Connor; meeting with tribal leaders; meeting with tribal leaders and Rob Foreman, legislative aide to Senator Hatch; memorandum to file regarding position of Senator Hatch on S. 487; strategy discussions with tribal leaders; meeting with tribal leaders and Ryan Leonard, legislative aide to Senator Nickles; memorandum to file regarding position of Senator Nickles on S. 487; discussions with tribal leaders regarding the meetings with Senator Dorgan, Senator Inouye and Senator McCain.
Discussions with L. Kitto; discussions with P. O'Donnell regarding meeting with Senator McCain; discussions with James Symington and L. Kitto regarding meeting with Senator Dan Akaka; arrange and accompany delegation of three Indian tribal chiefs to Senator McCain's office and discussions concerning development of the new bill amending the Indian Gaming Reform Act and report back to Tom Corcoran on the positive reaction of Senator McCain on same; discussion with Tom Corcoran regarding Senator Inouye meeting; Work-up.
Long distance discussions with Larry Kitto getting briefing on Senator Inouye meeting and details of letters to Senators Inouye, Conrad and Dorgan.
Long distance to Tom Corcoran reporting on Senator Inouye meeting with clients on Thursday, August 3, 1995; Arranging for letters to go to Senators Inouye, Conrad and Dorgan; memorandum to file regarding Senator Akaka; memorandum to file regarding Senators Akaka, Inouye and McCain; discussions with R. Leonard, legislative aide to Senator Kassebaum; discussions with L. Kitto; discussions with Frank Ducheneaux; discussions with aide to Senator Coverdell; discussions with P. O'Connor; review memorandum from L. Kitto; discussions with Executive Director of Senate GOP Conference Thad Cochran; discussions with legislative aide to Senator Cochran and report to L. Kitto regarding meeting scheduled for 2:30 on August 8.

EXHIBIT
356-28

AA 0000286

O'CONNOR & HANNAN
COSTS AND EXPENSES INCURRED BUT NOT INCLUDED IN THIS INVOICE WILL BE SUBMITTED AT A LATER DATE

180

O'CONNOR & HANNAN
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON D.C. 20006-3483
(202) 887-1400

FED ID NO. 41-0825682

INVOICE

tember 14, 1995 32594-0002 ******
ian Gaming Regulatory Act

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Discussions with L. Kitto; discussions with legislative aide to Senator McCain and Senator Coverdell; meeting with Haley Fisackerly, aide to Senator Thad Cochran, Chairman of the Senate Republican Conference Committee; discussions with aide to Upper Sioux Tribe in reference to L. Kitto's meeting with top aides to Senator Wellstone; discussions earlier in the day with L. Kitto; discussions with legislative aides to Senators Campbell, Thomas, Hatch, Nickles, Nassebaum, Gorton, Murkowski and McCain; draft letter for tribal leaders regarding S. 487; memorandum to tribal leaders.
Attendance by L. Kitto at the Senate Committee on Indian Affairs mark up on S. 487; discussions with L. Kitto; discussions with aides to Senate Committee on Indian Affairs.
Discussions with E. Songetary of St. Croix Tribe; review various reports regarding action taken by the Senate Committee on Indian Affairs on S. 487; discussions with Tim Gliddon, Counsel to the House Native American Subcommittee, memorandum to clients; discussions with Audrey Kohnen, discussions with P. O'Connor and discussions with L. Kitto, preparing thank you letters to Senators Inouye, Conrad and Dorgan; Discussion with Tom Corcoran and getting briefing on Marklys; Revising letters.
Discussions with aides to Senate Committee on Indian Affairs; review S. 487 as passed by Senate Committee on Indian Affairs; memorandum to Senator Inouye; memorandum to Senator Conrad; memorandum to Senator Dorgan; discussions with Patrick O'Connor.
Discussions with P. O'Connor; discussions with L. Kitto; discussions with F. Ducheneaux; discussions with aides to Senate Committee on Indian Affairs; discussions with aides to National Indian Gaming Commission; discussions with aides to the Bureau of Indian Affairs. Reading letter from the Cabazans Tribe; preparing response.

EXHIBIT
356-29

AA 0000287

O'CONNOR & HANNAN

COSTS AND EXPENSES INCURRED BUT NOT INCLUDED IN THIS INVOICE WILL BE SUBMITTED AT A LATER DATE 181

ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N W
WASHINGTON D C 20006-3483
(202) 887-1400

FED ID NO 41-0625560

INVOICE

ember 14, 1995 32594-0002 ******
.an Gaming Regulatory Act

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Discussions with L. Kitto; discussions with aides to Senate Committee on Indian Affairs; discussions with GOP leadership aides regarding post-Labor Day Senate floor schedule; call from David Mercer of the DNC regarding possible lawsuit by Wisconsin Tribes that failed to get the race track trust land from Interior against Don Fowler and our clients; Discussion with Larry Kitto and Tom Corcoran regarding same.
L. Kitto in attendance in Milwaukee at tribal meeting regarding IGRA discussions with aides to House Subcommittee on Native American issues; discusstions with P. O'Connor; discussions with GOP leadership; call to Larry Kitto; Call to DNC regarding possible litigation. Reporting to T. Corcoran.
Discussions involving L. Kitto in Milwaukee with various national Indian gaming associaiton representatives and leaders; discussions with L. Kitto; discussions with P. O'Connor; discussions with NIGA representatives; call to David Mercer of DNC regarding possible lawsuit. Reporting to T. Corcoran.
Telephone discussions with Larry Kotto regarding Tom Daschle fundraiser in Minneapolis; Discussion regarding Committee to Re-Elect dinner in Washington, D.C; discussions with L. Kitto; discussions with aides to Senate Committee on Indian Affairs; discussions with outside lawyers and consultants to various Indian tribes in Washington.
Review L. Kitto's memorandum to tribes regarding status of Congressional analysis concerning IGRA; discussions with aides to House Subcommittee on Native American Affairs.
Discussions with L. Kitto; review O'Connor & Hannan's analysis of all U.S. Senators' likely positions on S. 487 as reported by the Senate Committee on Indian Affairs; review memorandum from L. Kitto regarding Senator Wellstone and the Coeurd'Alene tribe of Idaho and that tribe s national lottery proposal.
Discussions with L. Kitto; discussions with aides House Native American Subcommittee; discussions with staff of the NIGC regarding S. 487.

EXHIBIT
356-30

O'CONNOR & HANNAN

AA 0000288

182

ATTORNEYS AT LAW

SUITE 800
1519 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400

FED ID NO. 47-[illegible]

INVOICE

ember 14, 1995 32594-0002 ******
an Gaming Regulatory Act

PLEASE RETURN THIS PORTION WITH YOUR REMITTANCE

Total Services: [illegible] 50.00

[illegible]ements:

	Photocopies	1.4[illegible]
	Long Distance Telephone	25.[illegible]
	Deliveries	26.[illegible]
	Facsimiles	3.[illegible]
9/95	THOMAS J. CORCORAN - reimbursement for out of pocket expenses	566.[illegible]
0/95	PATRICK E. O'DONNELL - reimbursement for out of pocket expenses	9.[illegible]
3/95	LARRY KITTO - expenses including travel, lodging and meals	480.[illegible]

Total Disbursements: [illegible]1,[illegible]11.77

Total Services and Disbursements: [illegible]8,611.77

**********Statement of Account**********

ANCE DUE FROM PREVIOUS STATEMENT	.[illegible]
S PAYMENT(S)	.[illegible]
ANCE FORWARD	.[illegible]
RENT INVOICE	8610.77
ANCE DUE	$8,610.[illegible]

EXHIBIT
356-31

A- 0000289

O'CONNOR & HANNAN

[illegible]STS AND EXPENSES INCURRED BUT NOT INCLUDED IN THIS INVOICE WILL BE SUBMITTED AT A LATER DATE

183

D CD L HANNAH Proforma 0 7131 Batch 0 1276
Date 05/95 Proforma Statement as of 05/31/95 for matter# 32: 001
CLIENT 32594 St Croix Tribe
MATTER 32594-0001 Hudson Project - Nature of Matter Dog Track to

CLIENT INFORMATION
St Croix Tribe
P O Box 287
Hertel, Wisconsin 54845

MATTER INFORMATION
St Croix Tribe
P O Box 287
Hertel, Wisconsin 54845

Contact Lewis Taylor, Chrm

BILLING INFORMATION

Originating Attorney Thomas Corcoran
Supervising Attorney Thomas Corcoran
Billing Attorney Thomas Corcoran

Template B6
Timecard Format 23
Costcard Format 3
Arrangement BILLABLE
Fee Frequency M
Cost Frequency M
Maximum Billing:
Trust Retainer Account 0
Trust Retainer Amount
Billing Instructions Monthly

Open Date 02/08/1995
Status OP
Location 10

****

TIME ENTRY DETAIL

					WORKED			BILLING VALUE		
Index#	Date	INIT	CHG	BTAT	Hours	Rate	Amounts	Hours	Amounts	Services Performed
673216	03/02/95	PJD	PJD	B	.50	225.00	112.50	.50	112.50	Telephone conference with Tom Corcoran regarding forthcoming meeting with Duffy of Interior regarding creating trust lands at Hudson, Wisconsin dog track for a casino and need to contact Tom Collin.
673224	03/06/95	PJD	PJD	B	1.00	225.00	225.00	1.00	225.00	Long distance telephone discussion with Tom Corcoran regarding client's meeting on February 8 with Duffy in Oberster's office; telephone call to Tom Collin's office at Interior.
673230	03/07/95	PJD	PJD	B	1.00	225.00	225.00	1.00	225.00	Telephone call to Collins at Interior; draft letter and fax to Collins; reporting to Tom Corcoran.
673231	03/08/95	PJD	PJD	B	.73	225.00	168.75	.73	168.75	Report to Tom Corcoran on Collier; get report on meeting in Oberster's office from Tom Corcoran.
673239	03/13/95	PJD	PJD	B	.25	225.00	56.25	.25	56.25	Telephone conference with Tom Corcoran regarding need for a position paper for Interior and why it should not support a gaming casino at the Hudson, Wisconsin dog track.
676118	03/01/95	TJC	TJC	B	3.00	250.00	750.00	3.00	750.00	Review memorandum from L. Hitte and MIGA; discussions with BIA and Department of Interior officials; call to L. Taylor; work on Wisconsin delegation project.
676123	03/02/95	TJC	TJC	B	4.00	250.00	1000.00	4.00	1000.00	Discussions with M. Meisner of Solicitor's Office; discussions with F. Duchenaux;

EXHIBIT
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										discussions with L. Kitto; call to L. Taylor and M. Bichler; review documents from M Bichler; call to P. O'Connor regarding Secretary Babbitt; memorandum to L. Taylor.
674128	03/03/95	TJC	TJC	B	4.00	250.00	1000.00	4.00	1000.00	Draft letter for client and Winnebago Chairperson for Wisconsin delegation; discussions with L. Kitto; discussions with P. O'Connor; discussions with BIA officials; memorandum to L. Taylor; memorandum for P. O'Connor to Interior Secretary Babbitt; discussions with L. Kitto.
673760	03/06/95	TJC	TJC	B	3.00	250.00	750.00	3.00	750.00	Review memorandum from P. O'Connor; memorandum to L. Taylor; discussions with P. O'Connor; discussions with aide to Secretary Babbitt; call to B.J. Parker.
673766	03/07/95	TJC	TJC	B	2.00	250.00	500.00	2.00	500.00	Discussions with aides to Interior Secretary Babbitt; discussions with L. Kitto; discussions with P. O'Connor.
673769	03/08/95	TJC	TJC	B	1.50	250.00	375.00	1.50	375.00	Discussions with L. Kitto; discussions with aide to Interior Secretary Babbitt.
673783	03/09/95	TJC	TJC	B	3.00	250.00	750.00	3.00	750.00	Discussions with F. Duchenaux; discussions with L. Kitto; discussions with aide to Secretary Babbitt; discussions with P. O'Connor; discussions with Congressional aides.
673788	03/10/95	TJC	TJC	B	3.50	250.00	875.00	3.50	875.00	Discussion with L. Kitto; discussions with F. Duchenaux; call to L. Taylor; discussions with aide to Secretary Babbitt; discussion with P. O'Connor; discussion with L. Kitto.
674289	03/13/95	TJC	TJC	B	2.50	250.00	625.00	2.50	625.00	Discussions with L. Kitto; discussions with NIGC staff; discussions with Congressional aides.
674299	03/14/95	TJC	TJC	B	3.00	250.00	750.00	3.00	750.00	Discussion with L. Taylor; discussions with L. Kitto; discussion with L. Taylor following his meeting with G. Skibine, head of BIA Gaming Office; discussion with L. Kitto; discussion with L. Taylor.
674630	03/15/95	PJD	PJD	B	3.50	225.00	787.50	3.50	787.50	Meeting at Interior with Tom Corcoran, Larry Kitto and Tom Collier. Meeting at DNC with Truman Arnold and Chairman Don Fowler.
674303	03/15/95	TJC	TJC	B	6.00	250.00	1500.00	6.00	1500.00	Meeting with L. Kitto; memorandum to M. Gable of Coopers & Lybrand; memorandum to L. Taylor; discussion with L. Taylor; meeting with L. Kitto, P. O'Connor, T. Collier, Chief of Staff to Interior Secretary Babbitt, and M. Bissonius; P. O'Connor and L. Kitto meetings with various Democratic national campaign organizations (eg. DNC, DSCC); discussion with P. O'Connor; discussion with L. Kitto.
674655	03/16/95	PJD	PJD	B	.50	225.00	112.50	.50	112.50	Discussion with Tom Corcoran regarding meetings at Interior and DNC.
674310	03/16/95	TJC	TJC	B	3.00	250.00	750.00	3.00	750.00	Review notes from T. Collier meeting; memorandum to file; report to L. Taylor; memorandum to L. Taylor; additional discussion with L. Taylor regarding Coopers & Lybrand

EXHIBIT
356-33

O'CONNOR & HANNAN Proforma # 7013 Batch # 1534 — Page 1616 (1)
Date: 09/02/95 Proforma Statement as of [illegible]
CLIENT 32994 St. Croix Tribe
MATTER 32994-0001 Hudson Project - Nature of Matter: [illegible]

CLIENT INFORMATION	***MATTER INFORMATION***
St. Croix Tribe	St. Croix Tribe
P.O. Box 287	P.O. Box 287
Hertel, Wisconsin 54845	Hertel, Wisconsin 54845
	Contact: Lewis Taylor, Chrm

BILLING INFORMATION

Template: B6
Timecard Format: 23
Costcard Format: 3
Arrangement: BILLABLE
Fee Frequency: M
Cost Frequency: M
Maximum Billing
Trust Retainer Account #
Trust Retainer Amount
Billing Instructions: Monthly

Originating Attorney: Thomas Corcoran
Supervising Attorney: Thomas Corcoran
Billing Attorney: Thomas Corcoran

Open Date: 02/08/1995
Status: OP
Location: 10

TIME ENTRY DETAIL

					Worked			Billing Value		
Index#	Date	INIT	CHG	STAT	Hours	Rate	Amounts	Hours	Amounts	Services Performed
677091	04/03/95	TJC	TJC	B	2.50	250.00	625.00	2.50	625.00	Meeting with T. Glidden of Department of Interior Insular Affairs; review letter from J. Duffy, aide to Sec. Babbitt, to Sen. Wellstone; discussions with BIA officials; discussions with L. Kitto
677093	04/04/95	TJC	TJC	B	2.00	250.00	500.00	2.00	500.00	Discussions with L. Kitto; memorandum to L. Kitto regarding letter for L. Taylor and J. Jones; discussions with aides to Members of the Wisconsin Congressional delegation
677102	04/05/95	TJC	TJC	B	2.00	250.00	500.00	2.00	500.00	Discussions with L. Collette; discussions with aides to Members of Congress from Wisconsin
678824	04/06/95	PJD	PJD	B	1.00	225.00	225.00	1.00	225.00	Discussion with Tom Corcoran regarding need to call White House on Hudson Dog Track. Discussion with Larry Kitto
677120	04/07/95	TJC	TJC	B	2.00	250.00	500.00	2.00	500.00	Discussions with L. Kitto; discussions with F. Duchenaux; report on April 6 meeting of L. Kitto and L. Taylor; discussions with P. O'Connor regarding Sen. D'Amato's involvement in Hudson Dog Track Company and need to communicate this fact to White House and Sec. Babbitt of Interior Department
678833	04/10/95	PJD	PJD	B	.50	225.00	112.50	.50	112.50	Call to Loretta Avent at White House. Report to Tom Corcoran
677133	04/11/95	TJC	TJC	B	2.00	250.00	500.00	2.00	500.00	Meeting with M. Colopy; discussions by teleconference with M. Colopy and P. Babcock of

EXHIBIT
356-34

594 001 177

										Washington Post; discussions with F Duchenaux; L Taylor and L Kitto regarding the Washington Post investigation; development of Hudson projects newspaper clips for Washington Post reporter; review documents from L Taylor; review of Ho Chuck Nation resolution approving Hudson project and Oneida's statement of opposition
677141	04/12/95	TJC	TJC	B	1 50	250 00	375 00	1 50	375 00	Review public statements regarding Milwaukee baseball stadium statements by tribes involved in Hudson project application; preparation of memorandum and delivery of same and local newspaper clips regarding Hudson project to Washington Post
678853	04/17/95	PJO	PJO	B	25	225 00	56 25	25	56 25	Call to White House to Loretta Avent's office
677766	04/18/95	TJC	TJC	B	2 50	250 00	625 00	2 50	625 00	Discussions with L Kitto; review MICA file for September 14, 1994 involving studies by Dr Murray and Arthur Anderson, Inc; review file on "Finding of No Significant Impact"; discussions with aide to Interior Secretary Babbitt; discussions with L Kitto; draft letter for Sen Wellstone; memorandum to L Kitto
678864	04/19/95	PJO	PJO	B	50	225 00	112 50	50	112 50	Discussion with Tom Corcoran regarding fax to Loretta Avent Drafting and sending fax to Ms Avent
677770	04/19/95	TJC	TJC	B	2 00	250 00	500 00	2 00	500 00	Discussions regarding White House with P O'Connor; memorandum to white House aide L Avert for P O'Connor; memorandum to L Taylor; memorandum to L Kitto in Green Bay, Wisconsin
677783	04/21/95	TJC	TJC	B	2 50	250 00	625 00	2 50	625 00	Discussions with H Bibbison, deputy to Interior Counselor J Duffy; letter and documents to H Bibbison and Counselor Duffy; discussions with L Kitto; discussions with BIA regarding September 14, 1994 correspondence with Minnesota tribes
678872	04/22/95	PJO	PJO	B	50	225 00	112 50	50	112 50	Discussion with Larry Kitto regarding setting up appointments with D N C and White House
678875	04/24/95	PJO	PJO	B	8 00	225 00	1800 00	8 00	1800 00	Long distance calls to Loretta Avent office regarding my decision to raise the Hudson Race Track issue with President Clinton in Minneapolis if I did not hear from her Meeting with the President on the Hudson Race Track issue with Bruce Lindsey and Linda Moore of the White House staff answering call from Loretta Avent and her staff regarding Hudson Dog Track Reporting to Larry Kitto
678696	04/24/95	TJC	TJC	B	2 50	250 00	625 00	2 50	625 00	Plan strategy for final week before T Collier deadline for "consultation" ends at Department of Interior; memorandum to J Blodjet and Mr Epstein, top aides to Senator Wellstone; discussions with Larry Kitto
678877	04/25/95	PJO	PJO	B	2 00	225 00	450 00	2 00	450 00	Meeting in St Paul with Larry Kitto and discussing meeting on Friday with Don Fowler of

678698	04/25/95	TJC	TJC	B	4 00	250 00	1000 00	4 00	1000 00	the D N C Long distance telephone conversation with Lora Hartigan of the Presidential Committee to Re-elect Discussion with Pat O'Connor regarding his meeting with President Clinton and impact of L Avert of President's staff, arrangements for Washington meeting this week for Tribal Indians from Wisconsin and Minnesota, meetings with staff aides to House and Senate hearing committees, discussions with M Epstein top aide to Senator Wellstone, several discussions with H Sibbison, aide to Secretar Babbitt, discussions with G Skibine
678708	04/26/95	TJC	TJC	B	3 00	250 00	750 00	3 00	750 00	Discussions with Larry Kitto, discussions with T Krevejewish M Butterfield of Ho Chunk Tribe, discussion with B Liable of Peat Marwick, discussion with M Gaber of Coopers & Lybriand, call to L Taylor, discussions with aides to Interior Security Babbitt, discussions with aides to Senator Wellstone
678884	04/27/95	PJO	PJO	B	2 00	225 00	450 00	2 00	450 00	Calls to the White House and the D N C regarding tribe's meeting with Chairman Fowler Call to Tom Corcoran regarding same Call to Larry Kitto in Washington, D C
678714	04/27/95	TJC	TJC	B	3 00	250 00	750 00	3 00	750 00	Discussions with M Epstein top aide to Senator Wellstone, discussions with H Sibberson aide to Secretary Babbitt, call to L Taylor, discussions and memorandum to Coopers & Lybrand, discussions and memorandum to Peat Marwick, strategy discussions with M Epstein legislative director for Senator Wellstone and Mr Butterfield, tribal attorney for Ho Chunk Nation, discussions with Larry Kitto
678490	04/28/95	PJO	PJO	B	4 00	225 00	900 00	4 00	900 00	Meeting with Larry Kitto and David Mercer at D N C discussing contributions program for the Indians, Meeting with Chairman Fowler, David Mercer and the Indian tribal leaders, including Louis Taylor, to discuss the Hudson Dog track issue and seeking support from the Chairman to intercede with the White House, further discussion with L Kitto re meeting with Harold Ickes at the White House,
678724	04/28/95	TJC	TJC	B	4 00	250 00	1000 00	4 00	1000 00	Discussions with Pat O'Connor and Larry Kitto regarding House assistance on our case, discussions with D Mercer aide to DNC chairman, memorandum from Larry Kitto authored by Tom Corcoran for D Fowler, DNC Chairman, meeting of tribal leaders from Minnesota and Wisconsin with DNC Chairman and D Mercer, discussions regarding litigator and Washington Post with Ho Chunk representative, discussion with Pat O'Connor for H Ickes, top aide to President Clinton, regarding lack of cooperation with our client on Murray and

EXHIBIT
356-36

O'CON & HANNAN Proforma B 8/30 Batch B
Date 06/04/95 Proforma Statement as of 06/04/95 for matters 32594 0001
CLIENT 32594 St Croix Tribe
MATTER 32594-0001 Hudson Project - Nature of Matter Dog track to

CLIENT INFORMATION
St Croix Tribe
P O Box 287
Hertel, Wisconsin 54845

MATTER INFORMATION
St Croix Tribe
P O Box 287
Hertel Wisconsin 54845

(contact Lewis Taylor, Chrm

BILLING INFORMATION

Originating Attorney Thomas Corcoran
Supervising Attorney Thomas Corcoran
Billing Attorney Thomas Corcoran

Template BA
Timecard Format 23
Costcard Format 3
Arrangement BILLABLE
Fee Frequency M
Cost Frequency M
Maximum Billing
Trust Retainer Account #
Trust Retainer Amount
Billing Instructions Monthly

TIME ENTRY DETAIL

					WORKED			BILLING VALUE		
Index#	Date	INIT	CHG	BTAT	Hours	Rate	Amounts	Hours	Amounts	Services Performed
681385	05/01/95	PJO	PJO	B	.25	225.00	56.25	.25	56.25	Report to Tom Corcoran regarding Friday meeting at D.N.C.
681389	05/02/95	PJO	PJO	B	1.00	225.00	225.00	1.00	225.00	Telephone conference with D. Mercer regarding appointment at White House with Harold Ickes; Finish briefing of T. Corcoran on Friday D.N.C. meeting
681396	05/03/95	PJO	PJO	B	1.00	225.00	225.00	1.00	225.00	Calls to D.N.C. regarding White House appointment; Long distance telephone conference with Larry Mitto.
681402	05/04/95	PJO	PJO	B	.75	225.00	168.75	.75	168.75	Telephone calls to D. Mercer at D.N.C.; Report to Larry Mitto regarding Chairman Fowler's memorandum to Harold Ickes.
679367	05/04/95	TJC	TJC	B	2.00	250.00	500.00	2.00	500.00	Discussions with P. O'Connor and L. Mitto regarding delivery of materials to White House as requested by D. Fowler, DNC Chairman; discussions regarding meeting with White House Deputy Chief of Staff H. Ickes; discussions with F. Duchenaux; discussions with aide to Senate Indian Affairs Committee; discussions with Department of Interior officials
681612	05/07/95	PJO	PJO	B	2.50	225.00	562.50	2.50	562.50	Draft letter to Harold Ickes at White House setting forth reasons to approve creating trust lands for Casino at the Hudson, WI dog track; Discussion with Larry Mitto checking on facts set forth in Ickes letter

EXHIBIT
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681613	05/08/95	PJO	PJO	B	1 00	225 00	225 00	1 00	225 00	Discussion with Tom Corcoran and editing letter to Harold Ickes. Arranging distribution of letter
680063	05/08/95	TJC	TJC	B	2 00	250 00	500 00	2 00	500 00	Discussions with P O'Donnell, review memorandum for White House Deputy Chief of Staff H Ickes, discussions with P O'Connor; letter and memorandum to H Ickes; memorandum to L Nitto; memorandum to L Taylor; memorandum to DNC Chairman Fowler and D Mercer; discussions with F Duchenaux; memorandum to P O'Connor
681614	05/09/95	PJO	PJO	B	1 00	225 00	225 00	1 00	225 00	Discussion with Tom Corcoran; Long distance telephone conference to Tom Snyder briefing him on problem. Fax to Snyder; Call to D N C
680069	05/09/95	TJC	TJC	B	1 00	250 00	250 00	1 00	250 00	Discussions with F Duchenaux; discussions with L Nitto; discussions with BIA officials
681620	05/10/95	PJO	PJO	B	50	225 00	112 50	50	112 50	Long distance discussion with David Mercer regarding follow-up with Harold Ickes; Discussion with Tom Corcoran regarding follow-up with congressional delegations
680079	05/10/95	TJC	TJC	B	1 50	250 00	375 00	1 50	375 00	Discussions with P O'Conner regarding White House involvement in our case at Interior Department; discussions with L Nitto; review materials from L Nitto and P O'Conner; memorandum to L Nitto
681630	05/12/95	PJO	PJO	B	50	225 00	112 50	50	112 50	Call to Larry Nitto regarding hearing advising the tribes and Minnesota and Wisconsin delegations regarding my letter to Harold Ickes. Call to David Mercer to get update
680091	05/12/95	TJC	TJC	B	3 50	250 00	875 00	3 50	875 00	Meeting with tribal representatives; discussions with F Duchenaux; discussions with partners regarding White House actions to stop Hudson project; discussions with BIA officials; discussions with L Nitto.
681638	05/15/95	PJO	PJO	B	50	225 00	112 50	50	112 50	Telephone conference to D Mercer of D N C regarding status report on meeting with Harold Ickes; Call to Tom Corcoran regarding sending accountant's report to Harold Ickes.
680333	05/15/95	TJC	TJC	B	1 50	250 00	375 00	1 50	375 00	Discussions with P O'Conner regarding Deputy White House Chief of Staff H Ickes; discussions with L Nitto; memorandum to buy White House aides regarding client issues
681646	05/16/95	PJO	PJO	B	1 00	225 00	225 00	1 00	225 00	Oral report from Tom Snyder that he talked to President Clinton regarding status of matter. Report to D Mercer, Tom Corcoran; Call to John Sutton at Harold Ickes' office; Report to Larry Nitto
680343	05/16/95	TJC	TJC	B	3 00	250 00	750 00	3 00	750 00	Review of Peat Marwick report; letter and memorandum and Peat Marwick report to H Ickes, Deputy White House Chief of Staff; discussions with White House aides; memorandum to L Taylor; memorandum to L Nitto for MEGA; report to L Nitto regarding President Clinton's comments about "our friends" and racetrack

										issue
681632	05/17/95	PJO	PJO	B	.50	225.00	112.50	.50	112.50	Discussion with David Mercer regarding delay in getting appointment with Harold Ickes
681634	05/19/95	PJO	PJO	B	3.00	225.00	675.00	3.00	675.00	Meeting with Frank D and review Wall Street Journal article on Delaware North. Meeting with Tom Corcoran and draft proposed letter to be sent to Minnesota delegation to Harold Ickes regarding Hudson dog track. Long distance telephone conference with Larry Kitto arranging meeting with Minnesota delegation on Wednesday, May 24 in Washington, D.C.. Dinner meeting with David Mercer of the D.N.C.. Report on cause of delay in meeting with Harold Ickes
680364	05/19/95	TJC	TJC	B	2.50	250.00	625.00	2.50	625.00	Discussions with P. O'Connor regarding White House strategy and action with Deputy Chief of Staff H. Ickes; discussions with L. Kitto; telephone conference with L. Kitto and P. O'Connor, discussions with P. Taylor of Duchaneaux and Taylor Associates, draft letter for Minnesota Congressional Delegation and send to H. Ickes of White House staff, discussions with P. O'Connor and L. Kitto regarding next meeting, plans and actions
681638	05/23/95	PJO	PJO	B	1.00	225.00	225.00	1.00	225.00	Meet with Larry Kitto and Terry MacAuliffe explaining our story
681266	05/23/95	TJC	TJC	B	2.00	250.00	500.00	2.00	500.00	Preparation of letter for Minnesota Congressional Delegation to send White House aide Harold Ickes, discussion with Pat O'Connor, discussion with Larry Kitto, discussion with T. Krzewiski of Ita-Chunk Nation, report to Larry Kitto
681661	05/24/95	PJO	PJO	B	3.00	225.00	675.00	3.00	675.00	Trip to the Committee to Re-Elect; (Terry MacAuliffe); Conference with Chairman of National Finance Committee asking him to agree to call Harold Ickes and arrange appointment for Indians; Dinner with Al Gore; Conference with Peter Knight and David Strauss regarding Indian problem regarding Hudson dog track
681272	05/24/95	TJC	TJC	B	3.00	250.00	750.00	3.00	750.00	Discussion with Larry Kitto, discussion with Pat O'Connor, delivery of proposed letter by Minnesota Congressional Delegation to Larry Kitto and aides to Congressman Wellstone, Congressman Oberstar, Vento and Sabo, preparation of draft letter for Senators Daschle and Kerrey for correspondence with White House Deputy Chief of Staff H. Ickes, memorandum to Larry Kitto, discussion with BIA officials
681666	05/25/95	PJO	PJO	B	.50	225.00	112.50	.50	112.50	Reporting to Tom Corcoran on discussions with Peter Knight, David Strauss at Al Gore dinner; Report on meeting with Terry MacAuliffe
681275	05/25/95	TJC	TJC	B	3.00	250.00	750.00	3.00	750.00	Discussion with Pat O'Connor, discussion with Larry Kitto, discussions with Pat O'Connor with aide to Vice President Gore, discussion with

EXHIBIT
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681203	05/26/95	TJC	TJC	B	2 00	250 00	500 00	2 00	500 00	aide to Clinton/Gore Re-election Committee. finalize letters for Senators Daschle and Kerrey to send to Interior Secretary Babbitt. draft of letters for tribal leaders to send to Secretary Babbitt Discussion with E Duchorneaux, discussions with aides to House Natural Resource Committee, discussions with T Clidder, majority counsel to House Subcommittee on Native Americans, discussion with aide to COngressman D. Young, discussion with aide to Congressman Gallegly.
681914	05/30/95	TJC	TJC	B	1 50	250 00	375 00	1 50	375 00	Discussion with Larry Kitto Discussion with Pat O'Connor. Discussion with David Strauss, Aide to Vice President Gore Memorandum to F Duchorneaux Discussion with F Duchorneaux regarding Delaware North
681676	05/31/95	PJO	PJO	B	50	225 00	112 50	50	112 50	Long distance discussion with Tom Corcoran regarding Milbur Wil Journal article regarding dog track. Read fax
681929	05/31/95	TJC	TJC	B	17 00	250 00	4250 00	17 00	4250 00	Memorandum from T Hrazouski of Ho-Chunk Nation Memorandum to Don Fowler/David Mercer Memorandum to Tom Collier Memorandum to H Ickes/John Sutton Memorandum to L Taylor Discussion with Larry Kitto Discussion with Pat O'Connor, ~~plus Larry Kitto does for May of 10 hours~~

Meeting, discussion with [illegible] conversations [illegible] (Little, Chief, agency representatives and Minnesota Members of Congress and their staff — assistants on this matter)

••••••••••••••••••••••TIME TOTALS					64 00		••••••••••	64 00•	15,937 50	

DISBURSEMENT DETAIL

Index#	Date	CODE		STAT	TKPR	Quantity	Amount	Description
88939	05/07/95	13	Photocopies	B	999	37 00	7 40	Photocopies
83214	05/14/95	13	Photocopies	B	999	86 00	5 80	Photocopies
83638	05/21/95	13	Photocopies	B	999	39 00	7 80	Photocopies
84184	05/30/95	13	Photocopies	B	999	445 00	89 00	Photocopies
84343	05/31/95	13	Photocopies	B	999	9 00	1 00	Photocopies
			••••••••••SUBTOTAL••••••••••••			536 00	111 20	13
85090	05/31/95	14	Long Distance Telephone	B	999	1 00	10 95	Long Distance Telephone - Account Code Detail Report 4/30/95
85171	05/31/95	14	Long Distance Telephone	B	999	1 00	7 20	Long Distance Telephone - Account Code Detail Report 5/8/95
85313	05/31/95	14	Long Distance Telephone	B	999	1 00	3 42	Long Distance Telephone - Account Code Detail Report 5/30/95

EXHIBIT
356-40

Date O /95 Preferen
CLIENT 32594
MATTER 32594-0001 Hidden Project - Nature of Matter: Dog Track to

CLIENT INFORMATION
St Croix Tribe
P O Box 287
Hertel, Wisconsin 54845

MATTER INFORMATION
St. Croix Tribe
P. O. Box 287
Hertel, Wisconsin 54845

Contact: Lewis Taylor, Chrm

Originating Attorney: Thomas Corcoran
Supervising Attorney: Thomas Corcoran
Billing Attorney: Thomas Corcoran

Open Date: 02/08/1995
Status: OP
Location: 10

BILLING INFORMATION

Template: 89
Timecard Format: 23
Costcard Format: 3
Arrangement: BILLABLE
Fee Frequency: M
Cost Frequency: M
Maximum Billing:
Trust Retainer Account: 0
Trust Retainer Amount:
Billing Instructions: Monthly

TIME ENTRY DETAIL

Invoice	Date	INIT	CHG	STAT	WORKED Hours	Rate	Amount	BILLING VALUE Hours	Amount	Services Performed
682691	06/01/95	TJC	TJC	B	2.50	250.00	625.00	2.50	625.00	Meeting with L. Nitto, memorandum to L. Taylor regarding appointment with Secretary Babbitt; memorandum to White House aides Ickes, Button, Avert; memorandum to BMC; meeting with L. Nitto and S. Dacey regarding Wisconsin tribes and Wisconsin Congressional delegation.
682679	06/02/95	PDO	PDO	B	1.50	250.00	375.00	1.50	375.00	Conference with Tom Corcoran and call to Senator McCain to set up a meeting concerning a contested application. Per certification at the Department of Interior.
682703	06/02/95	TJC	TJC	B	1.50	250.00	375.00	1.50	375.00	Discussions with L. Nitto; discussions with P. O'Donnell regarding Senator McCain; memorandum to P. O'Donnell; discussions with P. O'Connor; discussions with B. Mercer of BMC; memorandum to Vice President Gore; memorandum to T. MacAuliff of Clinton/Gore Re-Elect Committee. Long distance telephone conference to T. Corcoran regarding Terry MacAuliffe arranging appointment with Harold Ickes. Discussion regarding getting City Council at Hudson to take legal action opposing casino.
683059	06/06/95	TJC	TJC	B	3.50	250.00	875.00	1.50	375.00	Discussions with P. O'Donnell regarding Senator McCain; discussions with Democratic National Committee officials. Discussions with P. O'Connor; discussions with BIA officials.

EXHIBIT
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594-001-210

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683012	06/08/95	POD	POD	B	2 00	250 00	500 00	2 00	500 00	discussions with L Kitto; memorandum to L Kitto; report to L Taylor regarding meeting with Senator McCain on June 8; discussions with F Ducheneaux; discussions with MIGA regarding Senator McCain meeting; discussions with Mo Chunk representatives regarding meeting with Senator McCain; discussions with partners regarding City of Hudson involvement and representation
683074	06/08/95	TJC	TJC	B	3 00	250 00	750 00	3 00	750 00	Visit with Senator McCain, Frank Ducheneaux and Tom Corcoran concerning possible infringement of unseemly elements into the Indian gaming situation in Minnesota
684387	06/12/95	PJO	PJO	B	50	225 00	112 50	50	112 50	Review file; discussions with P O'Donnell; discussions with F Ducheneaux; meeting with Senator McCain, F Ducheneaux and P O'Donnell; report to L Kitto; report to L Taylor; discussions with L Kitto regarding Congressman Saxo; discussions with White House Chief of Staff Leon Panetta; review memorandum from L Kitto
683686	06/14/95	TJC	TJC	B	2 50	250 00	625 00	2 50	625 00	Getting update from T. Corcoran regarding meeting with Senator McCain and with Hanou developments
684390	06/19/95	PJO	PJO	B	50	225 00	112 50	50	112 50	Discussions with aides to Senator McCain; discussions with several aides on the White House staff, including aides to Leon Panetta and Harold Ickes; discussions with L Kitto; memorandum to L Taylor; discussions with L Taylor; discussions with aides at Department of Interior
684468	06/19/95	TJC	TJC	B	2 50	250 00	625 00	2 50	625 00	Long distance telephone conference with Larry Kitto regarding meeting in Hudson, Wisconsin; Checking on letter from Congressmen and Senators to White House and Interior; Discussion regarding support to be given to Committee to Re-elect and D N C ; Discussion with Tom Corcoran
684497	06/23/95	TJC	TJC	B	2 50	250 00	625 00	2 50	625 00	Discussions with F Ducheneaux; discussions with aide to Senator McCain, Chairman of the Senate Indian Affairs Committee; discussions with BIA officials; discussions with L Kitto; discussions with representatives of Mo Chunk Nation regarding Hudson project
683067	06/27/95	TJC	TJC	B	50	250 00	125 00	50	125 00	Meeting with tribal leaders at Hyatt Hotel on Capitol Hill with L Kitto; meeting involving tribal leaders and L Kitto with Tom Foley, incoming Commissioner to the National Indian Gaming Commission; discussions with aides to Senator McCain; discussions with BIA officials Discussions with L Kitto; discussions with tribal representatives of the Minnesota tribes; work on the tribal leaders' meeting with Interior Secretary Babbitt; memorandum to L

EXHIBIT
356-42

O'CONNOR & HANNAN
Date: 07/04/95 Proforma Statement
CLIENT: 32394 St Croix Tribe
MATTER: 32394-0001 Hudson Project - Nature of Matter

Page 1971 (3)

459074	06/28/95	TJC	TJC	8	1.00	250.00	1.00	250.00	Rite Memorandum to L. Rite; discussions with L.
459090	06/30/95	TJC	TJC	8	1.00	250.00	1.00	250.00	Rite; discussions with aides to members of the Minnesota delegation in Congress Discussions with partners regarding status of client issue; discussions with BIA officials; discussions with Deputy Interior Secretary Rebecca Watkins; discussions with L. Rite; discussions with aides to Senator McCain. Meetings; discussions and correspondence involving Larry Rite, client, agency representation and Members of Congress and their staff assistants on this matter.
TIME TOTALS					23.50	4237.50		23.50	

DISBURSEMENT DETAIL

Index	Date	CODE		Dist Info	Quantity	Amount	Description
87489	06/30/95	12		0	999	1.00	7.50 PATRICK E O'DONNELL - out of pocket expenses
			SUBTOTAL			1.00	7.50 12
85723	06/10/95	13	Photocopies	0	999	97.00	19.40 Photocopies
86037	06/18/95	13	Photocopies	0	999	2.00	.40 Photocopies
86380	06/22/95	13	Photocopies	0	999	16.00	3.20 Photocopies
87748	06/30/95	13	Photocopies	0	999	14.00	2.80 Photocopies
			SUBTOTAL			129.00	25.80 13
87269	06/28/95	14	Long Distance Telephone	0	999	1.00	2.46 Long Distance Telephone Long distance telephone
87680	06/30/95	14	Long Distance Telephone	0	999	1.00	1.05 Long Distance Telephone Long distance telephone
			SUBTOTAL			2.00	4.03 14
85901	06/10/95	16	Postage	0	999	105.00	20.40 Postage
87890	06/30/95	16	Postage	0	999	1.00	.55 Postage 594 001-212
			SUBTOTAL			106.00	34.15 16
87489	06/01/95	17	Word Processing	0	999	2.25	22.73 Word Processing
			SUBTOTAL			2.25	22.73 17
86411	06/22/95	25	Deliveries	0	999	1.00	4.87 WASHINGTON EXPRESS SERVICE, IN - Inv #901215 - 001 4/21/95
86412	06/22/95	25	Deliveries	0	999	1.00	7.93 WASHINGTON EXPRESS SERVICE, IN - Inv #901219 - Nite Epstein 4/27/95
86413	06/22/95	25	Deliveries	0	999	1.00	4.87 WASHINGTON EXPRESS SERVICE, IN - Inv #901215 -

EXHIBIT
356-43

O'CONNOR & HANNAN   Proforma # 9596   Batch #
Date 08/02/95   Proforma Statement as of 07/31/95 for Matter 32594-0001
CLIENT 32594   St Croix Tribe
MATTER 32594-0001   Hudson Project - Nature of Matter: Dog Track to

Page 1580 (1)

CLIENT INFORMATION
St Croix Tribe
P O Box 287
Hertel, Wisconsin 54845

MATTER INFORMATION
St Croix Tribe
P O Box 287
Hertel, Wisconsin 54845

Contact Lewis Taylor, Chrm

BILLING INFORMATION

Template B9
Timecard Format 23
Costcard Format 3
Arrangement BILLABLE
Fee Frequency M
Cost Frequency M
Maximum Billing
Trust Retainer Account #
Trust Retainer Amount
Billing Instructions Monthly

Originating Attorney Thomas Corcoran
Supervising Attorney Thomas Corcoran
Billing Attorney Thomas Corcoran

Open Date 02/08/1995
Status OP
Location 10

****

TIME ENTRY DETAIL

Index#	Date	INIT	CHG	STAT	WORKED Hours	Rate	Amounts	BILLING VALUE Hours	Amounts	Services Performed
685361	07/05/95	TJC	TJC	B	1 50	250 00	375 00	1 50	375 00	Discussions with L. Kitto; discussions with P O'Connor; discussions with aides to House of Representatives Native American Subcommittee.
685991	07/10/95	TJC	TJC	B	4 50	250 00	1125 00	4 50	1125 00	Discussions with L. Kitto; review story in Minneapolis Star Tribune regarding Hudson project; discussions with Bureau of Indian Affairs officials; discussions with legislative aides to members of the Wisconsin Congressional delegation and the Minnesota Congressional delegation.
685999	07/11/95	TJC	TJC	B	2.00	250 00	500 00	2 00	500 00	Discussions with L. Kitto, discussions with Dan Theno of Fort Howard Corporation in Wisconsin; discussions with aides to Senate Indian Affairs Committee and House Subcommittee on Native Americans
686008	07/12/95	TJC	TJC	B	2.00	250 00	500 00	2 00	500 00	Discussions with L. Kitto, discussions with Frank Duchenaux; development of strategy on Hudson involving contact with George Skibine, key official in the Gaming Office at the Department of Interior in order to get status report for client.
686014	07/13/95	TJC	TJC	B	3 00	250 00	750 00	3 00	750 00	Discussions with L. Kitto, work on Hudson project with Congressional aides from Minnesota and Wisconsin; discussions with BIA officials; meeting with aides to Senator McCain regarding

EXHIBIT
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594-001-218

687077	07/14/95	PJO	PJO	B	1 50	225 00	337 50	1 50	337 50	Department of Justice inquiry, discussions with aides to House Native American Subcommittee. Meeting with Larry Kitto in Minneapolis; Discussion regarding need to go to Hudson, WI and visit with city council members and city attorney. Discussion regarding necessity to follow-up with Harold Ickes at the White House, D Fowler at DNC and Terry Mac at the Committee to Re-elect, outlining fund raising strategies
686020	07/14/95	TJC	TJC	B	2 00	250 00	500 00	2 00	500 00	Discussions with L. Kitto; discussions with aides to House Native American Subcommittee; discussions with partners regarding further involvement of White House and Secretary Babbitt, discussions with Frank Ducheneaux regarding George Skivine, head of the relevant agency within the Interior Department involved with the Hudson project; discussions with aides to Minnesota Congressional delegation
686669	07/17/95	TJC	TJC	B	2 00	250 00	500 00	2 00	500 00	Discussions with P. O'Connor; discussions with L. Kitto; discussions with aides to Congressman Longley; discussions with aide to Congressman Metcalf; memorandum to L. Kitto
686671	07/18/95	TJC	TJC	B	2 00	250 00	500 00	2 00	500 00	Memorandum to Lewis Taylor; memorandum to L Kitto, discussions with BIA public information officials, discussions with aides to BIA gaming office, discussions with Lewis Taylor, meeting with Tim Glidden, Counsel to the House Native American Subcommittee
687085	07/19/95	PJO	PJO	B	1 50	225 00	337 50	1 50	337 50	Long distance discussions with Chairman Fowler regarding Department of Interior decision to reject an application for a casino at the Hudson, WI dog track; Sending faxes to Chairman Fowler; Reporting to T. Corcoran and L. Kitto regarding criteria voiced by opposition
686682	07/19/95	TJC	TJC	B	2 00	250 00	500 00	2 00	500 00	Discussions with P. O'Donnell; memorandum to Don Fowler, Chairman of the Democratic National Committee; meeting with aides to Congressman Jack Metcalf and Congressman Jones
687086	07/20/95	PJO	PJO	B	1 00	225 00	225 00	1 00	225 00	Briefing Larry Kitto on my conversations with Chairman Fowler of the DNC; Discussion regarding thank you letters to White House and members of the congress, Discussion regarding fund raising
686697	07/20/95	TJC	TJC	B	1 50	250 00	375 00	1 50	375 00	Memorandum to L Kitto, discussions with aide to House Native American Subcommittee, letter to Senator McCain regarding favorable Hudson decision for client.
686971	07/21/95	POD	POD	B	1 00	250 00	250 00	1 00	250 00	Review ruling by Interior Department declining request for certification via assistance given by Senator McCain, cosign thank-you letter to Senator McCain for his assistance thereon
686700	07/21/95	TJC	TJC	B	2 00	250 00	500 00	2 00	500 00	Discussions with L. Kitto, review draft thank-you letters for tribal leaders; review memorandum from L Kitto; discussions with

EXHIBIT
356-45

											letters
689630	08/15/95	PJO	PJO	B	.75	225.00	168.75	.75	168.75	Reading letter from the Cabazons Tribe; preparing response
689636	08/17/95	PJO	PJO	B	1.50	225.00	337.50	1.50	337.50	Call from David Mercer of the DNC regarding possible lawsuit by Wisconsin Tribes that failed to get the race track trust land from Interior against Don Fowler and our clients; Discussion with Larry Kitto and Tom Corcoran regarding same
689644	08/21/95	PJO	PJO	B	1.50	225.00	337.50	1.50	337.50	Call to Larry Kitto; Call to DNC regarding possible litigation; Reporting to T. Corcoran
689650	08/22/95	PJO	PJO	B	.25	225.00	56.25	.25	56.25	Call to David Mercer of DNC regarding possible lawsuit; Reporting to T. Corcoran
689652	08/23/95	PJO	PJO	B	.50	225.00	112.50	.50	112.50	Telephone discussions with Larry Kotto regarding Tom Daschle fundraiser in Minneapolis; Discussion regarding Committee to Re-Elect dinner in Washington, D.C.
**********		TIME TOTALS			36.50		8,612.50	36.50	8,612.50	

DISBURSEMENT DETAIL

Index#	Date	CODE		STAT	TKPR	Quantity	Amount	Description
91253	08/09/95	12		B	999	1.00	366.22	THOMAS J. CORCORAN - reimbursement for out of pocket expenses
	**********	SUBTOTAL	**********			1.00	366.22	12
91009	08/06/95	13	Photocopies	B	999	1.00	.20	Photocopies
92306	08/13/95	13	Photocopies	B	999	6.00	1.20	Photocopies
	**********	SUBTOTAL	**********			7.00	1.40	13
91317	08/01/95	14	Long Distance Telephone	B	999	1.00	4.79	Long Distance Telephone - CALL ACCOUNTING SYSTEM REPORT
91997	08/07/95	14	Long Distance Telephone	B	999	1.00	5.92	Long Distance Telephone - CALL ACCOUNTING SYSTEM REPORT
93559	08/31/95	14	Long Distance Telephone	B	999	1.00	13.52	Long Distance Telephone CALLING CARD BILL - AUGUST 1995
	**********	SUBTOTAL	**********			3.00	24.23	14
92033	08/17/95	25	Deliveries	B	999	1.00	10.75	FEDERAL EXPRESS CORPORATION - INV 5-566-87234- Larry Kitto 7/28/95
	**********	SUBTOTAL	**********			1.00	10.75	25
93582	08/31/95	31	Facsimiles	B	999	1.00	1.50	Facsimiles
93583	08/31/95	31	Facsimiles	B	999	1.00	1.50	Facsimiles
	**********	SUBTOTAL	**********			2.00	3.00	31

EXHIBIT
356-46

CLIENT INFORMATION
St Croix Tribe
P O Box 287
Hertel, Wisconsin 54845

MATTER INFORMATION
St Croix Tribe
P.O. Box 287
Hertel Wisconsin 54845

Contact Lewis Taylor

BILLING INFORMATION

Originating Attorney Thomas Corcoran
Supervising Attorney Larry Nitto
Billing Attorney Thomas Corcoran

Template B9
Timecard Format 3
Costcard Format 3
Arrangement BILLABLE
Fee Frequency M
Cost Frequency M
Manual Billing
Trust Retainer Account #
Trust Retainer Amount
Billing Instructions Monthly - Fixed Fees of $7,500/monthly plus expenses

Upon Date 08/10/1995
Status OP
Location 10

TIME ENTRY DETAIL

					WORKED			BILLING VALUE		
Index#	Date	INIT	CHG	BTAT	Hours	Rate	Amounts	Hours	Amounts	Services Performed
689183	08/01/95	TJC	TJC	B	11.50	300.00	3450.00	11.50	3450.00	Indian matter regarding racetrack gaming and the Hudson dog track. Telephone discussion and meeting with senior White House staff and PDTUB re expansion of gaming and the dog track and opposition to as doing.
690210	09/01/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with L. Nitto; review background material on Indian gaming issues for client; discussions with legislative aides to Senate Republican leadership on scheduling of Senator McCain legislation.
690831	09/05/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Review several memoranda from L. Nitto; discussions with Frank Buchenauer; discussions with aides to Senate Committee on Indian Affairs.
690844	09/06/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with P. O'Connor; discussions with Don Fowler, Chairman of the Democratic National Committee; discussions with L. Nitto; discussions with Frank Buchenauer; all discussions related to the likely lawsuit to be filed by our opposition in the Hudson dog track application case.
690868	09/07/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with P. O'Connor; discussions with L. Nitto; discussions with Lewis Taylor regarding the potential lawsuit by McDermott, Will & Emery against the Wisconsin and

EXHIBIT
356-47

Date 10/10/95 Proforma Statement as of 09/30/95 for matters 12596 thru 12597

CLIENT 32596 St Croix Tribe

MATTER 32596 0002 Indian Gaming Regulatory Act

CLIENT INFORMATION

St Croix Tribe
P O Box 287
Hertel, Wisconsin 54845

MATTER INFORMATION

St Croix Tribe
P O Box 287
Hertel, Wisconsin 54845

Contact Lewis Taylor

BILLING INFORMATION

Originating Attorney Thomas Corcoran
Supervising Attorney Larry Kitto
Billing Attorney Thomas Corcoran

Template: b9
Timecard Format: 1
Costcard Format: 3
Arrangement: BILLABLE
Fee Frequency: M
Cost Frequency M
Maximum Billing
Trust Retainer Account 0
Trust Retainer Amount
Billing Instructions Monthly Fixed Fees of $7,500/monthly plus expenses

Open Date 08/10/1995
Status OP
Location 10

TIME ENTRY DETAIL

					WORKED			BILLING VALUE		
Indexa	Date	INIT	CHG	STAT	Hours	Rate	Amount	Hours	Amount	Services Performed
692623	08/01/95	TJB	TJB	B	5.84	300.00	1752.00	5.84	1752.00	Indian matter regarding racetrack gaming and the Hudson dog track. Telephone discussion and meeting with senior White House staff and POTUS re expansion of gaming and the dog track and opposition to so doing.
690316	09/01/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with L. Kitto; review background material on Indian gaming issues for client; discussions with legislative aides to Senate Republican leadership on scheduling of Senator McCain legislation.
690331	09/06/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Review several memoranda from L. Kitto, discussions with Frank Ducheneaux; discussions with aides to Senate Committee on Indian Affairs.
690364	09/06/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with P. O'Connor; discussions with Don Fowler, Chairman of the Democratic National Committee, discussions with L. Kitto, discussions with Frank Ducheneaux; all discussions related to the likely lawsuit to be filed by our opposition in the Hudson dog track application case.
691604	09/06/95	PJO	PJO	B	1.50	225.00	337.50	1.50	337.50	Long distance discussions with Don Fowler regarding his meeting with Ron Pratt regarding appeal of Hudson Race track and threat to sue Don Fowler and Harold Tekee; Reporting to Larry

EXHIBIT
356-48

										Ritto and Tom Corcoran.
690262	09/07/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with P. O'Connor, discussions with L. Ritto, discussions with Lewis Taylor regarding the potential lawsuit by McDermott, Will & Emery against the Wisconsin and Minnesota tribes involved in the Hudson project, discussions with BIA officials
691179	09/11/95	THQ	THQ	B	1.00	300.00	300.00	1.00	300.00	Telephone conference with Ron Platt; Telephone conferences with Patrick J. O'Connor and Robert Tennessen, Review letter;
690767	09/11/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with T. Quinn; discussions with P. O'Connor; discussions with L. Ritto; discussions with Lewis Taylor, discussions with Lewis Taylor and St. Croix Tribal Council representative, discussions with L. Ritto; L. Ritto meetings with NIGA representatives
691413	09/11/95	RJO	RJO	B	2.50	225.00	562.50	2.50	562.50	Getting report from T. Quinn regarding Ron Platt and litigation; Calls to T. Corcoran, L. Ritto regarding suit to be filed in federal court in Minnesota. Discussion with J. Walters regarding litigation
690776	09/13/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with L. Ritto, review materials from L. Ritto, L. Ritto attendance at two-day conference for NIGA, discussions with NIGA representatives, discussions with Frank Ducheneaux
690787	09/15/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with Frank Ducheneaux meeting of Arizona tribes with Senator McCain on various client issues, discussions regarding October 4 meeting of NIGA task force to clarify recent Milwaukee of NIGA; report to L. Ritto; discussions with Frank Ducheneaux regarding report in BNA regarding House Ways and Means Committee Chairman Archer's latest proposal to extend some tax legislation and to close loopholes which also includes some tax affects on Indian tribes engaged in Indian gaming; memorandum and background information on House Ways and Means Committee proposed action affecting Indian gaming sent to Frank Ducheneaux and tribal lawyers for analysis; further report on tax issues to L. Ritto.
691216	09/18/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with L. Ritto, discussions with Howard Bichler, tribal attorney for St. Croix Tribe; discussions with L. Ritto regarding gaming tax proposal contained in the legislation being sponsored by House Ways and Means Committee Chairman Archer, review several memorandum from L. Ritto; discussions with Frank Ducheneaux; memorandum to file; further discussions with L. Ritto.
691336	09/19/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with attorneys regarding lawsuit filed on the Hudson project that has implications for the Minnesota and Wisconsin

EXHIBIT 356-69

201

467

594-002-60

O'CONNR HANNAN Proforma # [illegible]
Date 11/02/95 Proforma Statement [illegible]
CLIENT 32594 St Croix Tribe
MATTER 32594.0002 Indian Gaming Regulatory Act

CLIENT INFORMATION
St Croix Tribe
P O Box 287
Hertel, Wisconsin 54845

[illegible]
St Croix Tribe
P O Box 287
Hertel, Wisconsin 54845

Contact Lewis Taylor

BILLING INFORMATION

Template b9
Timecard Format 3
Costcard Format 3
Arrangement BILLABLE
Fee Frequency M
Cost Frequency M
Maximum Billing
Trust Retainer Account #
Trust Retainer Amount
Billing Instructions Monthly - Fixed Fees of $7,500 monthly plus expenses

Originating Attorney Thomas Corcoran
Supervising Attorney Larry Nitti
Billing Attorney Thomas Corcoran

Open Date 08/10/1995
Status IP
Location 10

594-002-74

TIME ENTRY DETAIL

					WORKED			BILLING VALUE		
Index#	Date	INIT	CHG	STAT	Hours	Rate	Amounts	Hours	Amounts	Services Performed
689183	08/01/95	TJS	TJS	B	5.66	300.00	1698.00	5.66	1698.00	Indian matter regarding racetrack gaming and the Hudson dog track. Telephone discussion and meeting with senior White House staff and FDTUS re expension of gaming and the dog track and opposition to so doing
693968	10/02/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Memorandum to partners, meetings with NIGA representatives, discussions with Tim Jenkins regarding Senator Breaux, discussions with Bob Barrie regarding Senator Graham, discussions with Audrey Mahnen regarding client issues, discussions with John Duncan, Legislative Director for Senate Finance Chairman Roth, discussions with Frank Ducheneaux regarding Senator Breaux, discussions with BIA officials
692529	10/02/95	TMJ	TJC	B	1.50	200.00	300.00	1.50	300.00	Review materials from client, telephone conference with client, telephone conference with staff of Senator Breaux to schedule meeting with client
694391	10/02/95	RWB	RWB	B	2.00	250.00	500.00	2.00	500.00	Talked with staff re issue, Letter mailed Reviewed with Tom Corcoran
693975	10/03/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Meeting with John Duncan, Administrative Assistant and Legislative Director for Senate Finance Chairman Roth, discussions with Lewis Taylor, discussions with Frank Ducheneaux, review various background memoranda involving

EXHIBIT
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695057	10/25/95	TJC	TJC	P	50	[illegible]	[illegible]	50	[illegible]	Discussions with L Kitto discussions with Frank Ducheneaux. meeting with L Kitto. telephone conference with L Kitto and Howard Dickler regarding Hudson case. discussions with Tim Glidden. Counsel to the House Subcommittee on Native American Affairs. discussions with aides to the Bureau of Indian Affairs
695065	10/26/95	TJC	TJC	B	50	[illegible]	[illegible]	50	[illegible]	Discussions with L Kitto. discussions with aide to Speaker Gingrich regarding meeting next week. discussions with legislative aide to Speaker Gingrich discussions with aides to Congressman Guthrecht and Congressman Ramstad
695557	10/27/95	TJC	TJC	B	50	250 00	125 00	50	125 00	Discussions with L Kitto. discussions with Audrey Rohnen. review case 95 C 0659 C on Hudson project. discussions with aides to US Interior Solicitor. discussions with Frank Ducheneaux
695565	10/30/95	TJC	TJC	B	50	250 00	125 00	50	125 00	Discussions with Audrey Rohnen. discussions with L Kitto. memorandum from Frank Ducheneaux. memorandum from L Kitto discussions with legislative aides to Senate Committee on Indian Affairs. discussions with L Kitto discussions with John Duncan, Chief of Staff for Senator Roth, Chairman of the Senate Finance Committee. memorandum from L Kitto review legal briefing papers on Indian gaming tax issue
**********	TIME TOTALS				29 91		7423 00	29 91	7,423 00	

DISBURSEMENT DETAIL

Index#	Date	CODE		STAT	TKPR	Quantity	Amount	Description
								594-002-77
97361	10/19/95	12		B	999	1 00	175 00	LARRY KITTO - September Expenses
98320	10/31/95	12		B	999	1 00	10 00	JAMES M SYMINGTON - OUT OF POCKET EXPENSES
		**********	SUBTOTAL**********			2 00	185 00	12
96774	10/09/95	13	Photocopies	B	999	14 00	2 80	Photocopies
98432	10/21/95	13	Photocopies	B	999	8 00	1 60	Photocopies
		**********	SUBTOTAL**********			22 00	4 40	13
46500	10/06/95	14	Long Distance Telephone	B	999	1 00	2 17	Long Distance Telephone - Call Accounting System Report
47463	10/23/95	14	Long Distance Telephone	B	999	1 00	30	Long Distance Telephone Long distance telephone
49250	10/31/95	14	Long Distance Telephone	B	999	1 00	12 17	Long Distance Telephone AT&T CALLING CARD BILL OCT 1, 1995
		**********	SUBTOTAL**********			3 00	14 64	14

EXHIBIT
356-51

											gaming tax issue and its impact on tribes
693170	10/03/95	PJO	PJO	B		.25	225.00	56.25	.25	56.25	Discussion with T. Corcoran regarding answer to Senator Inouye letter
693401	10/03/95	RMB	RMB	B		2.00	250.00	500.00	2.00	500.00	Prepare for and attend meeting with staff.
693986	10/04/95	TJC	TJC	B		.50	250.00	125.00	.50	125.00	Discussions with Lewis Taylor; discussions with Frank Ducheneaux; discussions with L. Kitto; memorandum to John Duncan, top aide to Senate Finance Chairman Roth, meeting with Senator Graham's staff people along with Lewis Taylor, Frank Ducheneaux and Bob Barrie; discussions with Audrey Rohnen of Prairie Island regarding October 6 tribal report on Washington activities; discussions with Audrey Rohnen and L. Kitto regarding arranging for Lenore Sheffler to participate in the October 5 meeting with Senator Breaux regarding the Indian gaming tax issue.
694080	10/05/95	TJC	TJC	B		.50	250.00	125.00	.50	125.00	Discussions with Gary Pitchlynn; discussions with John Duncan, top aide to Senate Finance Chairman William Roth; discussions with Dallas Ross; coordination with Lenore Sheffler regarding today's 5:00 meeting with Senator Breaux; meeting with Senator Breaux, top aide Fred Hatfield, Tim Jenkins and several tribal representatives of clients; discussions with aide to Senator Dole; discussions with aides to House Republican leadership
693539	10/05/95	TMJ	TJC	B		2.00	200.00	400.00	2.00	400.00	Conference with Thomas Corcoran regarding Breaux meeting; review materials for meeting; attend meeting;
694007	10/06/95	TJC	TJC	B		.50	250.00	125.00	.50	125.00	Discussions with P. O'Connor; discussions with aides to White House regarding October 10 event; memorandum to Dallas Ross of Upper Sioux; memorandum to James Symington regarding Senator Bradley and Senator Moynihan; discussions with legislative aides to Senator Dole
693854	10/10/95	JMB	JMB	B		.50	250.00	125.00	.50	125.00	Conference with Tom Corcoran. Telephone conference with Senator Bradley's office, Gailen McOwen, regarding appointment. Confirmed. Telephone conference with Senator Moynihan's aide, Tad Godbout.
694031	10/10/95	TJC	TJC	B		.50	250.00	125.00	.50	125.00	Discussions with Dallas Ross; discussions with B. Lurcer of the Upper Sioux Tribe; memorandum to clients regarding local governments; discussions with James Symington regarding Senators Bradley and Moynihan; discussions with aides to Senators Roth, Dole, Chafee, Grassley, Pressler and Murkowski; memorandum to Lewis Taylor of St. Croix Tribe; discussions with Dallas Ross of Upper Sioux Community
694033	10/11/95	TJC	TJC	B		.50	250.00	125.00	.50	125.00	Discussions with Tim Jenkins regarding Senator Breaux; discussions with Frank Ducheneaux; discussions with Dallas Ross; discussions with

EXHIBIT
356-52

470

594-002-83

691179	09/11/95	THQ	THQ	B	1.00	[illegible]	[illegible]	1.00	[illegible]	Minnesota tribes involved in the Hudson project; discussions with BIA officials Telephone conference with Ron Platt; Telephone conferences with Patrick J O'Connor and Robert Tennessen; Review letter;
690747	09/11/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with T Quinn; discussions with P O'Connor; discussions with L Kitto; discussions with Lewis Taylor; discussions with Lewis Taylor and St Croix Tribal Council representative; discussions with L Kitto; L Kitto meetings with NIGA representatives
690774	09/13/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with L Kitto; review materials from L Kitto; L Kitto attendance at two-day conference for NIGA; discussions with NIGA representatives; discussions with Frank Ducheneaux
690787	09/15/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with Frank Ducheneaux; meeting of Arizona tribes with Senator McCain on various client issues; discussions regarding October 4 meeting of NIGA task force to clarify recent Milwaukee of NIGA; report to L Kitto; discussions with Frank Ducheneaux regarding report in BNA regarding House Ways and Means Committee Chairman Archer's latest proposal to extend some tax legislation and to close loopholes which also includes some tax affects on Indian tribes engaged in Indian gaming; memorandum and background information on House Ways and Means Committee proposed action affecting Indian gaming sent to Frank Ducheneaux and tribal lawyers for analysis; further report on tax issues to L Kitto
691218	09/18/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with L Kitto; discussions with Howard Bickler, tribal attorney for St Croix Tribe; discussions with L Kitto regarding gaming tax proposal contained in the legislation being sponsored by House Ways and Means Committee Chairman Archer; review several memorandum from L Kitto; discussions with Frank Ducheneaux; memorandum to file; further discussions with L Kitto
691236	09/19/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with attorneys regarding lawsuit filed on the Hudson project that has implications for the Minnesota and Wisconsin tribes; discussions with L Kitto; discussions with Frank Ducheneaux; review complaint filed by opponents in the Hudson case; discussions with representatives of the Department of the Interior who are the defendants in this case
691239	09/20/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with Audrey Kahnen; two telephone conference with Prairie Island Business Council; discussions with Audrey Kahnen regarding Congressman Guthnecht of Minnesota; discussions with aides of the Senate Finance

EXHIBIT
356-53

Date 10/17/95 Proforma Statement as of 09/30/95 for matter 32594.0002
CLIENT: 32594 St Croix Tribe
MATTER: 32594.0002 Indian Gaming Regulatory Act

CLIENT INFORMATION
St Croix Tribe
P O Box 287
Hertel, Wisconsin 54845

MATTER INFORMATION
St Croix Tribe
P O Box 287
Hertel Wisconsin 54845

Contact Lewis Taylor

BILLING INFORMATION

Originating Attorney Thomas Corcoran
Supervising Attorney Larry Kitto
Billing Attorney Thomas Corcoran

Template B9
Timecard Format: 3
Costcard Format: 3
Arrangement BILLABLE
Fee Frequency M
Cost Frequency M
Maximum Billing
Trust Retainer Account #
Trust Retainer Amount
Billing Instructions Monthly - Fixed Fees of $1,500/monthly plus expenses

Open Date 08/10/1995
Status OP
Location LO

****

TIME ENTRY DETAIL

					WORKED			BILLING VALUE		
Index#	Date	INIT	CHG	STAT	Hours	Rate	Amounts	Hours	Amounts	Services Performed
689183	08/01/95	TJB	TJB	B	11.50	300.00	1450.00	11.50	1450.00	Indian matter regarding racetrack gaming and the Hudson dog track. Telephone discussion and meeting with senior White House staff and POTUS re expansion of gaming and the dog track and opposition to so doing.
690310	09/01/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with L. Kitto; review background material on Indian gaming issues for client; discussions with legislative aides to Senate Republican leadership on scheduling of Senator McCain legislation.
690331	09/05/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Review several memoranda from L. Kitto; discussions with Frank Ducheneaux; discussions with aides to Senate Committee on Indian Affairs.
690366	09/06/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with P. O'Connor; discussions with Don Fowler, Chairman of the Democratic National Committee; discussions with L. Kitto; discussions with Frank Ducheneaux; all discussions related to the likely lawsuit to be filed by our opposition in the Hudson dog track application case.
691486	09/06/95	PJO	PJO	B	1.50	225.00	337.50	1.50	337.50	Long distance discussions with Don Fowler regarding his meeting with Ron Pratt regarding appeal of Hudson Race track and threat to sue Don Fowler and Harold Ickes. Reporting to Larry

EXHIBIT
356-54

											Kitto and Tom Corcoran
690368	09/07/95	TJC	TJC	B		.50	250.00	125.00	.50	125.00	Discussions with P. O'Connor, discussions with L. Kitto, discussions with Lewis Taylor regarding the potential lawsuit by McDermott, Will & Emery against the Wisconsin and Minnesota tribes involved in the Hudson project, discussions with BIA officials
691179	09/11/95	TMQ	TMQ	B		1.00	300.00	300.00	1.00	300.00	Telephone conference with Ron Platt; Telephone conference with Patrick J. O'Connor and Robert Tennessen; Review letter;
690767	09/11/95	TJC	TJC	B		.50	350.00	175.00	.50	125.00	Discussions with T. Quinn; discussions with P. O'Connor; discussions with L. Kitto; discussions with Lewis Taylor; discussions with Lewis Taylor and St. Croix Tribal Council representative; discussions with L. Kitto; L. Kitto meetings with NIGA representatives.
691612	09/11/95	RJO	RJO	B		3.50	225.00	562.50	3.50	562.50	Getting report from T. Quinn regarding Ron Platt and litigation; Calls to T. Corcoran, L. Kitto regarding suit to be filed in federal court in Minnesota; Discussion with J. Walters regarding litigation
690776	09/13/95	TJC	TJC	B		.50	250.00	125.00	.50	125.00	Discussions with L. Kitto, review materials from L. Kitto, L. Kitto attendance at two-day conference for NIGA, discussions with NIGA representatives, discussions with Frank Ducheneaux
690769	09/18/95	TJC	TJC	B		.50	250.00	125.00	.50	125.00	Discussions with Frank Ducheneaux meeting of Arizona tribes with Senator McCain on various client issues, discussions regarding October 4 meeting of NIGA task force to clarify recent Milwaukee of NIGA; report to L. Kitto, discussions with Frank Ducheneaux regarding report in GNA regarding House Ways and Means Committee Chairman Archer's latest proposal to extend some tax legislation and to close loopholes which also includes some tax effects on Indian tribes engaged in Indian gaming; memorandum and background information on House Ways and Means Committee proposed action affecting Indian gaming sent to Frank Ducheneaux and tribal lawyers for analysis; further report on tax issues to L. Kitto.
691358	09/18/95	TJC	TJC	B		.50	350.00	175.00	.50	125.00	Discussions with L. Kitto; discussions with Howard Bichler, tribal attorney for St. Croix Tribe; discussions with L. Kitto regarding gaming tax proposal contained in the legislation being sponsored by House Ways and Means Committee Chairman Archer; review several memorandum from L. Kitto; discussions with Frank Ducheneaux; memorandum to file; further discussions with L. Kitto
691358	09/19/95	TJC	TJC	B		.50	350.00	175.00	.50	125.00	Discussions with attorneys regarding lawsuit filed on the Hudson project that has implications for the Minnesota and Wisconsin

EXHIBIT
356-55

										tribes, discussions with L Ritto, discussions with Frank Ducheneaux, review complaint filed by opponents in the Hudson case, discussions with representatives of the Department of the Interior who are the defendants in this case.
691319	09/30/95	TJC	TJC	B	.50	250 00	125 00	.50	125 00	Discussions with Audrey Kohnen; two telephone conference with Prairie Island Business Council, discussions with Audrey Kohnen regarding Congressman Gutknecht of Minnesota; discussions with aides of the Senate Finance Committee regarding gaming tax issues; discussions with L Ritto; review various memoranda from L Ritto.
691349	09/21/95	TJC	TJC	B	.50	250 00	125 00	.50	125 00	Review materials from the Prairie Island Tribal Council; telephone conference with L. Ritto and Audrey Kohnen; memorandum to L. Ritto; call to Robert Grey Eagle and message for him regarding September 18 tribal council letter to all members of Congress, discussions with Audrey Kohnen, discussions with E Bartell of Prairie Island and revisions to make Prairie Island letter current regarding taxes
691623	09/31/95	DJO	DJO	B	1 00	225 00	675 00	1 00	675 00	Reading letter from Senator Inouye, Discussion about letter with Larry Ritto, Faxed letter to Larry Ritto and T Corcoran
691866	09/33/95	JMB	JMB	B	.25	250 00	62 50	.25	62 50	Conference with Tom Corcoran regarding Senators Bradley and Moynihan
691368	09/33/95	TJC	TJC	B	.50	250 00	125 00	.50	125 00	Discussions with Audrey Kohnen; report on September 21 tribal leaders meeting; discussions with L Ritto and Audrey Kohnen regarding Congressman Hinge, Congressman Oberstar, Congressman Babo and Senator Wellstone; discussions with aide to Senator Grams, discussions with L Ritto and Frank Ducheneaux regarding gaming tax issue in Senate; telephone conference with L Ritto and Audrey Kohnen regarding Minnesota delegation; discussions with aide to Senator Grams; discussions with L Ritto and James Byrington regarding Finance Committee Senators of particular importance on gaming issues (Senator Roth, Bradley, Moynihan and Moseley-Braun)
691946	09/33/95	DJO	DJO	B	1.00	225.00	225 00	1 00	225 00	Reading faxes from Larry Ritto regarding Ways and Means and Senate Finance legislative problem, Discussion with Larry Ritto regarding same
692021	09/35/95	TJC	TJC	B	.50	250 00	125.00	.50	125 00	Discussions with L Ritto; discussions with aides to Minnesota Senator Grams, discussions with L Scheffler; discussions with Audrey Kohnen; review strategy memorandum regarding Senate Finance Committee; discussions with aide to House Native American Subcommittee, memorandum to clients directed to A Kohnen, D Rape and L Taylor; discussions with L Ritto;

EXHIBIT
356-56

										aides to Speaker Gingrich; discussions with Frank Ducheneaux; memorandum to Frank Ducheneaux; discussions with Dan Meyer, Chief of Staff for Speaker Gingrich.
696209	11/08/95	POD	POD	B	2.00	250.00	500.00	2.00	500.00	Call to Senator Dole's Administrative Assistant Dave Wilson at Tom Corcoran's request to schedule meeting for November 8 or 9 with tribal leadership to discuss Indian gaming tax issue in the Senate Finance Committee and House Ways and Means Committee; obtain meeting for November 9 and advise Tom Corcoran of same.
696320	11/08/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with L. Kitto; meeting with L. Kitto, Lewis Taylor and Frank Ducheneaux; meeting with P. O'Donnell regarding Senator Dole; discussions with L. Kitto; discussions with P. O'Donnell regarding 11:00 a.m. November 9 meeting with legislative aide to Senator Dole; discussions with Don Meyer, Chief of Staff for Speaker Gingrich; report to L. Kitto on meeting scheduled for November 9 with David Wilson, legislative aide to Senator Dole.
696221	11/09/95	POD	POD	B	1.50	250.00	375.00	1.50	375.00	Visit with Senator Dole's Indian Administrative Assistant David Wilson, Tom Corcoran, Larry Kitto and representatives of St. Croix and California tribes.
696331	11/09/95	TJC	TJC	B	1.00	250.00	250.00	1.00	250.00	Discussions with P. O'Donnell; discussions with L. Kitto; discussions with Lewis Taylor; meeting with Lewis Taylor, L. Kitto, P. O'Donnell and David Wilson, legislative aide to Senate Majority Leader Dole; discussions with Lewis Taylor and L. Kitto; meeting with L. Kitto; memorandum to California tribes treasurer M. Pete regarding Congressman Bono of California and Speaker Gingrich.
696342	11/10/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with Howard Bichler, tribal attorney for St. Croix Tribe, regarding Hudson lawsuit; discussions with L. Kitto regarding Justice Department role in Hudson lawsuit; preparation of report for clients with L. Kitto; discussions with L. Kitto regarding Hudson lawsuit; report from L. Kitto regarding Justice Department position on Hudson lawsuit; memorandum to file.
696813	11/13/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with aides to House GOP leadership; discussions with aides to House Ways and Means Committee; discussions with aides to Senate Finance Committee regarding gaming tax; report from Senator McCain that the Senate position in opposition to the proposed gaming tax on Indian tribes has been upheld; discussions with L. Kitto; discussions with P. O'Donnell; discussions with James Symington; work on Hudson lawsuit issue with Interior Department.
696824	11/13/95	TJC	TJC	B	.50	250.00	125.00	.50	125.00	Discussions with L. Kitto; discussions with P.

EXHIBIT
356-57

696835	11/16/95	TJC	TJC	B	50	250 00	125 00	50	125 00	O'Donnell; work on Hudson lawsuit; discussions with aides to Secretary Babbitt; discussions with Frank Ducheneaux Discussions with L Kitto; work on Hudson lawsuit case; discussions with aides to Secretary Babbitt; memorandum to Secretary Babbitt regarding lawsuit
696844	11/17/95	TJC	TJC	B	50	250 00	125 00	50	125 00	Memorandum to Interior Secretary Babbitt regarding Hudson lawsuit; discussions with aides to Secretary Babbitt
697098	11/20/95	TJC	TJC	B	50	250 00	125 00	50	125 00	Discussions with legislative aides to House Ways and Means Committee; discussions with staff of Senate Finance Committee; discussions with House GOP leadership aides; discussions with Senate GOP leadership aides; discussions with L Kitto; discussions with Audrey Kohnen of the Prairie Island Tribe
697620	11/28/95	TJC	TJC	B	50	250 00	125 00	50	125 00	Discussions with Audrey Kohnen; discussions with aides to Senate Energy Committee; discussions with legislative aide to House Commerce Committee; discussions with L Kitto; discussions with John Duncan, Administrative Assistant and Legislative Director for Senator Roth, Chairman of the Senate Finance Committee; discussions with legislative aides to Chairman of the House Ways and Means Committee
697629	11/29/95	TJC	TJC	B	50	250 00	125 00	50	125 00	Discussions with aides to House Commerce Committee; discussions with aides to Senate Finance Committee; discussions with Audrey Kohnen; discussions with L. Kitto; discussions with Wendy Milgeme of Prairie Island Tribe
••••••••••••••••••••••TIME TOTALS					11 00		2750 00	11 00	~~2,750 00~~	after transferring fee from 101, Wite my fee 1,750.00

DISBURSEMENT DETAIL

Index#	Date	CODE		STAT	TKPR	Quantity	Amount	Description
100928	11/30/95	12		B	999	1 00	4 50	PATRICK E O'DONNELL - OUT OF POCKET EXPENSES
		••••••••••SUBTOTAL••••••••••				1 00	4 50	12
100754	11/24/95	13	Photocopies	B	999	22 00	4 40	Photocopies
		••••••••••SUBTOTAL••••••••••				22 00	4 40	13
101275	11/30/95	25	Deliveries	B	999	1 00	7 93	WASHINGTON EXPRESS SERVICE, IN - Inv #912160 - HSOB 10/2/95
		••••••••••SUBTOTAL••••••••••				1 00	7 93	25
100418	11/19/95	31	Facsimiles	B	999	2 00	2 00	Facsimiles
		••••••••••SUBTOTAL••••••••••				2 00	2 00	31
••••••••••••••••••••COST TOTALS						26 00	16 83	

EXHIBIT
356-58

O'CONNOR & HANNAN Proforma # 13420 Batch # 4500
Date: 01/03/96 Proforma Statement as of 12/31/95 for matters 32594 0002
CLIENT: 32594 St Croix Tribe
MATTER: 32594-0002 Indian Gaming Regulatory Act

498681	12/13/95	TJC	TJC	B	50	250 00	125 00	50	125 00	Discussions with staff aides on Senate Indian Affairs Committee, discussions with Audrey Rahnan, discussions with Tim Gliddon, counsel to House Native American Affairs Subcommittee
498687	12/14/95	TJC	TJC	B	50	250 00	125 00	50	125 00	Review draft testimony on S. 1271; delivery of testimony on S 1271 to Karen Huntsinger, counsel for the Senate Energy and Natural Resources Committee; discussions with Tim Gliddon, counsel to the House Native Affairs Subcommittee; meeting with L. Kitto.
498699	12/15/95	TJC	TJC	B	50	250 00	125 00	50	125 00	Discussions with L Kitto; meeting with L. Kitto and the tribal lawyers and lobbyists in Washington; discussions with L. Kitto; series of meetings that L. Kitto and tribal leaders had in Washington.
499473	12/18/95	TJC	TJC	B	50	250 00	125 00	50	125 00	Discussions with L Kitto; discussions with L. Kitto; review several L. Kitto memoranda.
499485	12/19/95	TJC	TJC	B	50	250 00	125 00	50	125 00	Work on Hudson lawsuit issues; discussions with aides to U S Department of Interior Secretary Babbitt
499501	12/20/95	TJC	TJC	B	50	250 00	125 00	50	125 00	Review several memorandum from L Kitto; review memorandum sent to Indian gaming clients; review various Washington reports concerning gaming issues; review documents and discussions with Department of Interior representatives regarding the Hudson dog track lawsuit. Larry Kitto's meetings; discussions and correspondence with client representatives. O'Connor & Hannan partners and government executives and Congressional officials in Washington for this month.
••••••••••••••••••••TIME TOTALS					9 50		1,362 50	9 50	1,362 50	

Transfer of fees to trust a/c
Recovery of fees from trust

DISBURSEMENT DETAIL

Index#	Date	CODE		STAT	TKPR	Quantity	Amount	Description
104319	12/31/95	14	Long Distance Telephone	B	999	1 00	10 15	Long Distance Telephone - AT&T CALLING BILL DEC 1, 1995
104327	12/31/95	14	Long Distance Telephone	B	999	1 00	8 03	Long Distance Telephone - AT&T CALLING BILL NOV 1, 1995
			••••••••••SUBTOTAL••••••••••			2 00	18 18	14
103639	12/22/95	31	Facsimiles	B	999	4 00	2 50	Facsimiles
			••••••••••SUBTOTAL••••••••••			4 00	2 50	31
••••••••••••••••••••COST TOTALS						6 00	20 68	
TOTAL FEES (BILLED VALUE)						9 50	1,362 50	

EXHIBIT
356-59

Mr. LEEPER. Mr. Bennett, excuse me, I'm Charles Leeper, counsel for Mr. O'Connor, and we do not have an exhibit book before us.

Mr. BENNETT. I apologize. You should have one right before you, Counsel. I'm sorry.

Mr. LEEPER. May we have the number?

Mr. BENNETT. Yes, I'm going to do it right now. The exhibit is 356. For your assistance, each panel is marked, and looking at the page marked 356–45 of that exhibit, Counsel.

Mr. O'Connor, as your attorney finds that document, there is reference—that is a billing record, and I believe your billing records would have, as with all law firms, it is itemized to the 10th of an hour and records the various lawyers who worked on matters, isn't that correct, Mr. O'Connor?

Mr. O'CONNOR. Yes. I believe, Counsel, you're a little too close to the microphone.

Mr. BENNETT. Excuse me.

Mr. O'CONNOR. I have difficulty hearing.

Mr. BENNETT. I apologize, sir.

Mr. O'CONNOR. Not hearing, but understanding.

Mr. BENNETT. The echo, and I apologize.

The entries there in those time records, "PJO" represents you, does it not, in those time records?

Mr. O'CONNOR. Yes.

Mr. BENNETT. Referring to 356–45——

Mr. WAXMAN. Mr. Chairman, there's some reference to exhibits, but I want to point out for the record the minority has not been furnished these exhibits. If we are going to have exhibits in a hearing, they ought to be given to the witness and to the minority so that we will all know what is being discussed.

Mr. BURTON. The gentleman will suspend for a moment. Would you make sure the minority has all the exhibits, please, and in the future those exhibits should be given to the minority well in advance of the hearing so that they are prepared. I don't know what happened there.

Mr. BENNETT. I have no idea, Mr. Chairman.

Congressman Waxman, sir, do you have those exhibits in front of you?

Mr. WAXMAN. We just got one book. I want my counsel to look at it. I would like to have it as well. Could we have two maybe?

Mr. BENNETT. For the record, Mr. Chairman, these exhibits are to be placed on the television screen as well, as we discussed that.

Mr. BURTON. The problem we have with that is it is hard to read sometimes on these monitors, especially when we have the fine print. Let's just hold off for a second to make sure everybody has the exhibits so we are all singing from the same hymnal, at least in this case.

Mr. WAXMAN. I thank you for providing this. I have made this suggestion in the past, that when you are going to use exhibits, they ought to be furnished to the minority. This it seems to me is basic procedural courtesies that ought to be extended to us. I just want to state again my strong objection, and it looks like the chairman agrees with it. When you are talking to your staff about leaks,

also talk to them about getting us exhibits. Let's get this committee on track.

Mr. BURTON. Before we go any further, let me just say, there is no evidence of any leaks. We will look into it. If we find that there were leaks, we will take care of it. But you don't need to keep bringing that up again and again. We will check into it. And we will try to make sure in the future all documents are presented to you well in advance of the hearing. I hope everybody on the staff heard that. I want that done.

OK, the gentleman from Virginia, Mr. Bennett.

Mr. BENNETT. From Maryland, Mr. Chairman.

Mr. BURTON. From Maryland, pardon me.

Mr. BENNETT. It's a stepsister to Virginia.

Mr. O'Connor, if we can, I have this up on the projection screen in the hearing room, and we will try to make sure, Congressman Waxman, I don't know why those exhibit books weren't placed in front of you, we have an abundance of them, and I apologize.

Referencing July 14, 1995, that is the day that the casino application of the Chippewa Indians was rejected by the Department of the Interior.

Do you see that there, sir?

Mr. O'CONNOR. Yes. At the top of the page.

Mr. BENNETT. Yes, sir. On that exhibit, there is reference that you are to followup with Harold Ickes of the White House for, quote, "outlining fund-raising strategies." Do you see that sir?

Mr. O'CONNOR. I see here that "Discussions regarding necessity to followup with Harold Ickes at the White House, Don Fowler at the DNC, and Terry McAuliffe at the Committee to Re-elect." That stands as one item.

Mr. BENNETT. Right. And then doesn't it say right there next to it, sir, it says, "outlining fund-raising strategies"?

Mr. O'CONNOR. Yes. That's another item, yes.

Mr. BENNETT. And it's right there on your time entry for July 14.

And continuing down that page, sir, July 20, 1995, there is reference in your billing records to fund-raising again, if you look at your entry of July 20, 1995, fund-raising.

Mr. O'CONNOR. Yes.

Mr. BENNETT. Mr. O'Connor, my question to you, sir, is why would you be billing your client, the St. Croix tribe, for your steps in fund-raising?

Mr. O'CONNOR. I bill clients on occasion, and certain clients if I feel that fund-raising activities are important to the client, to any input I might get as a result of attending fund-raising receptions, any data I might get on issues that might be discussed at that fund-raising that are pending in Congress. If I feel that it would be of importance to the client and the client should know it, I bill my time for it, yes.

Mr. BENNETT. And so, then, sir, again not casting any aspersions upon you, Mr. O'Connor, but then clearly the matter of raising money and political fund-raising was very much involved in this process of trying to kill this casino application; isn't that correct?

Mr. O'CONNOR. Can you——

Mr. BENNETT. I'm sorry, isn't that correct? You're billing your client for political fund-raising activities, and I gather in light of your

last answer, you felt that the matter of raising money was very much important in connection with succeeding in the objectives of your client; isn't that correct?

Mr. O'CONNOR. If you're talking about going to fund-raising events or working on fund-raising itself, if I was of the opinion that it would be helpful to the client, I would bill for it.

Mr. BENNETT. Do you ordinarily bill your clients for fund-raising activities as you did with the St. Croix tribe here, sir?

Mr. O'CONNOR. I have in the past. If I feel that fund-raising activities are part of the work that I'm doing for the client, I'll bill for it. It varies.

Mr. BENNETT. Then, sir, obviously with respect to fund-raising activities being part of the process, obviously politics were very much a part of this process in terms of killing this casino application; isn't that correct?

Mr. O'CONNOR. Politics, in what sense, Counsel?

Mr. BENNETT. I guess the point is we have had Secretary Babbitt in light of his comments, and he is going to testify here tomorrow, has essentially said this, that politics wasn't involved at all with respect to the rejection of this casino application.

Mr. O'CONNOR. That could be.

Mr. BENNETT. And we are going to go through the chronology of your billing records, sir, but I submit that the points I raised, your billing records as well as others throughout those billing records, reflected by exhibit 356 contain notations to your billing your client for fund-raising activities, billing your clients for discussions with the Committee to Re-elect the President, billing your client for discussions with Harold Ickes about political fund-raising. So Secretary Babbitt would not be correct, would he, to say that politics wasn't involved? Politics was very much involved in this matter.

Mr. O'CONNOR. I think that what you said about my billing is correct. However, I never talked to Harold Ickes in terms of fund-raising or, in fact, I never talked to Harold Ickes at all on this issue.

Mr. BENNETT. Let me show you if I can, and move on, sir, looking at your time records, exhibit 356, Counsel, page 33, 356–33. It appears, looking at those time sheets, Mr. O'Connor, that your first involvement specifically on the matter, not your first entry in your time sheets but your first involvement, appears to have been on March 15, 1995, when you had a meeting in Washington. You want to look at that time entry there, sir?

Mr. O'CONNOR. Certainly.

Mr. BARRETT. Excuse me, Mr. Chairman. If I could, please. If counsel is going to be referring to a number of documents, maybe it would be helpful to tell us which documents he's going to be referring to. We can have staff get us those documents right now; then we won't have to scurry every time it goes on the screen, if you would be kind enough to do so.

Mr. BURTON. The problem it appears, though, is that we don't have enough books to give every Member one.

Mr. BARRETT. I understand that. What I'm saying is, I think Mr. Bennett probably will be referring to other comments in the course of his questioning. If he could let us know what numbered docu-

ments those are now, we could send the staff back on our side to make copies.

Mr. BENNETT. Congressman Barrett, we will be referring to, for example, 356, the time records, and we can have someone prepare a list in the next few minutes as we move forward so you can get some documents later on.

Mr. BARRETT. That would be helpful. Thank you.

Mr. BURTON. Do you need some time before we get back to the questioning to review the documents?

Mr. BARRETT. It would be helpful.

Mr. BURTON. We can hold up for a minute or two, if you would like.

Mr. BARRETT. I would like to be able to read these.

Mr. BURTON. Let's just suspend, then, while the staff makes copies of the relevant documents so that everybody has them in sequence. How long is it going to take?

Mr. BENNETT. It should only take a matter of a minute or two, Mr. Chairman.

Mr. BURTON. Let's suspend for a minute or two.

[Brief Recess.]

Mr. BURTON. The gentleman from Maryland may proceed.

Mr. BENNETT. Thank you, Mr. Chairman. My apologies, Congressman Barrett. Do you have this document in front of you now, sir?

Looking at exhibit 356–33, your time sheet for March 15, 1995, Mr. O'Connor, it reflects your first involvement in this matter, I think, basically was March 15, 1995, when you came here to Washington; is that correct?

Mr. O'CONNOR. I believe there may have been some involvement prior to that time. My recollection is I got involved in this matter in February.

Mr. BENNETT. And I think in fairness to you, sir, your time records will reflect some telephone calls, but I am mainly addressing the first time you actually were in a meeting, and according to our review of the records, it is March 15, 1995, when you are here in Washington, I believe, Counsel. Looking at that entry, I note that you not only met with officials at the Department of the Interior but also at the Democratic National Committee; isn't that correct?

Mr. O'CONNOR. That's correct.

Mr. BENNETT. In fact, there is a document which was produced pursuant to a subpoena issued to the Democratic National Committee, exhibit 299. That exhibit, Mr. O'Connor, exhibit 299, which is on the projection screen here in the hearing room and I believe your attorney is about to locate it, it is a memo from David Mercer to Chairman Fowler, Don Fowler of the Democratic National Committee.

Who is David Mercer, Mr. O'Connor?

[Exhibt 299 follows:]

Memorandum

DATE: March 15, 1995

TO: Chairman Fowler

FROM: David Mercer

RE: Briefing for O'Connor/Kitto Meeting

CC: Sullivan, Wakem and Swiller

Pat O'Connor, a Minneapolis DNC Trustee, requested a meeting with you to introduce Larry Kitto, a BLF member and lobbyist for several Minnesota Indian tribes. The meeting, scheduled for 3:00 pm today, is preceded by a meeting they are having with Tom Collier, Interior's Chief of Staff. Below is a background briefing on the participants and their issues.

Participants

Pat O'Connor--hosted recent Chairman's brunch in Minneapolis; '93 DNC Trustee; today is his 75th Birthday; he and his wife, Evie served as Clinton/Gore '92 Minnesota finance chairs; partner, O'Connor & Hannan; represents American Indian interests.

Larry Kitto--President, MPA Consultants; member, Sioux Tribe; Harvard graduate; American Indian lobbyist; recently joined the firm of O'Connor & Hannan; BLF member; executive with Little Six, Inc. an American Indian gaming company.

Issues

O'Connor wanted to introduce Kitto to you since he was unable to attend the Minneapolis brunch. Kitto is supportive of the DNC and O'Connor believes we can raise his level of participation. The meeting helps to reinforce Kitto's relationship with the DNC and by extension our relationship with the American Indians in Minnesota.

O'Connor and Kitto are meeting with Tom Collier to represent the concerns of several Minnesota tribes about a neighboring Wisconsin dog track that might be converted into a casino. Apparently several Wisconsin tribes, led by the St. Croix, have submitted a bid on the track and are seeking to establish "land in trust" with the Department of Interior. According to O'Connor and Kitto, this would lead to direct competition to Minnesota gaming operations--Little Six and Treasure Island casinos--and bring economic hardship to Minnesota tribes.

Mr. O'CONNOR. David Mercer is an employee of, or was at that time, of the Democratic National Committee.

Mr. BENNETT. Why would your first meeting be with the Democratic National Committee?

Mr. O'CONNOR. Why would I be meeting with the Democratic National Committee?

Mr. BENNETT. Yes, sir. In fact, looking at, again, at your time records, exhibit 356–33 with respect to your time sheet on this day, and again we will have it on the television screen here in the hearing room and there at the table before you, there apparently may be a little difficulty in seeing those, but they are being projected up on the screen now and they are in the exhibit book before you. On that page in your time sheets, there, in fact from March 15, again these are matters you're billing the St. Croix tribe for in relation to your representation in stopping the casino of the Chippewa Indians. There is reference to meetings to various Democratic national campaign organizations.

My question to you, sir, again, is what would various national campaign organizations of the Democratic party have to do with the application of the Chippewa Indians?

Mr. O'CONNOR. Well, as you're aware, we met on the 28th, I believe. Yes, April 28th, with Chairman Fowler and several chiefs or chairmen of Indian tribes that were involved in the Hudson Dog Track matter. Now, you're calling my attention now to the meeting——

Mr. BENNETT. March 15, sir. I will get to the April 28 meeting, presuming my time doesn't expire, but the March 15 meeting is what I am addressing now, sir.

Mr. O'CONNOR. Yes. I should say at the outset that I recorded time such as I recorded as shown in this billing. I was not involved in the actual billing. That was left to another—to a partner in the firm. I recorded time. Whether or not it was—whether or not I was paid for it or not, I don't know, because you should know that we were on a retainer every—$7,500 a month. That would account for about 33 hours of time in a particular month at our rate of about $225 an hour.

In reviewing these records, I have seen that every month in the 6-month period, except one, we went way over. So whether or not I was paid, the fact remains I did record time.

And I recorded this time. I don't recall at this moment what was discussed at this meeting with the DNC with Truman Arnold and Chairman Don Fowler. I don't recall what transpired or what was discussed at that particular meeting. I do have recollections on the other meeting.

Mr. BENNETT. Mr. Chairman, did you want to ask a question?

Mr. BURTON. Your billing records showed you billed the Chippewas, the St. Croix tribe for this time. Why would you be billing them for time when you were discussing issues at the DNC regarding that tribe? What was the purpose of you talking to the people at the DNC about this tribe at all?

Mr. O'CONNOR. The reason, I would think, that I put time down for meeting with Fowler on the 15th was the fact that I may very well have talked to Don Fowler about this issue, about this application that was pending.

Mr. BURTON. Mr. O'Connor, why would the DNC be involved in any way in this application?

Mr. O'CONNOR. When we get to the 24th, we went to Mr. Fowler to ask him whether or not he would consider talking to Harold Ickes about this matter.

Mr. BURTON. So you wanted Mr. Fowler to use his influence with Mr. Ickes to try to kill the application.

Mr. O'CONNOR. No. No, Mr. Chairman.

Mr. BURTON. Then why would you want him to talk to Mr. Ickes?

Mr. O'CONNOR. I can answer that.

Mr. BURTON. Sure.

Mr. O'CONNOR. The reason that we wanted Mr. Fowler to go talk to Harold Ickes was, first, I wanted a meeting with Mr. Ickes at some time with a couple of people from the St. Croix tribe. I was hopeful that Mr. Ickes would give us such a meeting. I was also hopeful that he might make an inquiry over at Interior and say, look, people have approached me on this issue and they feel you're not focusing on their opposition to this application. That was my hope.

Mr. BURTON. I understand, Mr. O'Connor. So the point was, you wanted the DNC to use their influence to at least set up a meeting with Mr. Ickes so you could present your case.

Mr. O'CONNOR. I think that's a fair statement. I question influence. I would rather—you call it what you want, but I wanted Mr. Fowler to see, because I knew he worked with Ickes, whether Mr. Fowler would raise this issue with Mr. Ickes to see if I could get a meeting both with myself and with my client, and also so that we would have an opportunity to discuss our concerns. That's true.

Mr. BURTON. I don't want to infringe too much on your time. When you were asking Mr. Fowler to do this and you weren't getting the proper results, you talked to some other people about getting access to Mr. Ickes and people at Interior; didn't you?

Mr. O'CONNOR. In addition to Mr. Fowler, yes.

Mr. BURTON. Who did you talk to?

Mr. O'CONNOR. I talked to Terry McAuliffe.

Mr. BURTON. What did Mr. Mr. McAuliffe say?

Mr. O'CONNOR. In my meetings with Mr. McAuliffe, I was on his committee and I was attempting to raise money, hard money, $1,000 an individual for the Committee to Re-elect in the primary. During my discussions there, I did—I've known Terry for a long time. I did tell him that I was having difficulty getting to Harold Ickes and I knew he saw him frequently, and I said, I'm trying to get a meeting with Harold Ickes; would you, as a personal favor to me, would you mention that to him. I might add, Mr. Chairman, I don't have a relationship with Mr. Ickes. I don't even think I ever met him.

Mr. BURTON. I understand. But you were trying to get access.

Did you talk to anybody else?

Mr. O'CONNOR. I would have talked to anyone that I thought would help me get it. Did I talk to anyone else? My recollection is the only people I talked to were Fowler, I mentioned it, of course, to Mercer, and I talked to——

Mr. BURTON. Mr. Schneider?

Mr. O'CONNOR. And I talked to McAuliffe. I may have——

Mr. BURTON. Did you talk to Mr. Schneider?

Mr. O'CONNOR. Oh, yes, I did.

Mr. BURTON. What did Mr. Schneider tell you?

Mr. O'CONNOR. Mr. Schneider, I asked whether or not if he were over at the White House and ran into Ickes, would he mention it if he thought it was appropriate to do so.

Mr. BURTON. What did he say then?

Mr. O'CONNOR. When he reported back?

Mr. BURTON. Yes, sir.

Mr. O'CONNOR. To me?

Mr. BURTON. Yes, sir.

Mr. O'CONNOR. Yes. My recollection is on the phone he reported back to me, and he said, I did talk to Ickes, and he said he was looking into it.

Mr. BURTON. So you did. You were able to get indirectly some access to Mr. Ickes and that he said he would look into it?

Mr. O'CONNOR. Through Mr. Schneider.

Mr. BURTON. Through Mr. Schneider?

Mr. O'CONNOR. Yes.

Mr. BURTON. Mr. Bennett.

Mr. BENNETT. Mr. O'Connor, picking up on the matter of Mr. Schneider, for the projectionist, it is page 13 of the prepared materials. Mr. O'Connor, if you will look, sir, on the matter of Mr. Schneider, to pick up on the chairman's questions, if you will look at your time sheets again, exhibit 356–38.

Mr. O'CONNOR. Yes.

Mr. BENNETT. Here is, in fact, an entry in that time sheet record for May 16, 1995, wherein you make a reference to getting a report from Tom Schneider, that he talked to President Clinton.

Do you see that notation in your billing records, sir?

Mr. O'CONNOR. I recall that.

Mr. BENNETT. In fact, in a deposition taken by this committee, which has now been made public Mr. O'Connor, Mr. Schneider has indicated that in early May 1995, you asked him if he could help, and he explained that he did, in fact, speak with Harold Ickes, and to followup on the point of Mr. Schneider, apparently his contacts with Mr. Ickes proved to have some weight because I will ask you, sir, to refer to exhibit 312. It is a document, sir, while you're looking for it, I will tell you was produced by the White House pursuant to a subpoena issued by this committee. It is, in fact, a May 18, 1995, memorandum for Mr. Harold Ickes from Ms. Jennifer O'Connor. There is specific reference to that May 18 memo to there having been a meeting last night by members of his staff on May 17, the day after Mr. Schneider's contact, essentially indicating the rejection of the casino application.

Were you aware that there was a meeting of Mr. Ickes' staff the day after Mr. Schneider spoke with Mr. Ickes?

[Exhibit 312 follows:]

May 18, 1995

EMORANDUM FOR HAROLD ICKES

ROM: JENNIFER O'CONNOR

UBJECT: INDIAN GAMING IN WISCONSIN

ne attached information from Patrick O'Connor refers to a proposal at Interior to allow three /isconsin tribes to establish a casino at a bankrupt dog track in Hudson, Wisconsin.

ne Secretary of the Interior has the discretionary ability to create trust lands to enable the ibes to establish the casinos. However, by statute, he must first assess the economic costs id benefits to the local community.

ne Department is reviewing the proposal. Staff met last night and came up with a eliminary decision, which will likely not be final for another month. The staff believe it is obably a bad idea to create the trust land to allow the establishment of the casino. Their asons are as follows (NOTE – this information is not public and is confidential at this oint.):

The local community is almost uniformly opposed to the proposed casino. The tribes that want to establish it live 250 miles away, but no one in the immediate area wants it established, including the Mayor, City Council, other local officials and Congressman Gunderson. The Department feels that this local opposition is an indication of adverse impact on the local community.

The Minnesota delegation is also uniformly opposed to the proposal. Minnesota tribes located near the state border feel they would be adversely impacted by the competition.

It is likely that a decision to approve this proposal would result in a spotlight being shone on the Indian Gaming Regulatory Act, which is under some legislative pressure at the moment. The Department wants to avoid this kind of negative attention to the Act.

ne other side of the argument is the support of free market economics. Some Department aff think the bottom line here is the Minnesota and Wisconsin tribes who are benefitting normously from gaming don't want the competition, and are able to hire bigger lobbyists an the three very poor tribes who want the casino. However, the staff don't think this gument negates the uniform opposition from the local community.

ne current status is this: the Department is reviewing the comments received during the mment period which ended April 30. It has committed to making a final decision within a onth.

EOP 064394

EXHIBIT

312

Mr. O'CONNOR. Are you referring——

Mr. BENNETT. Exhibit 312, sir. It is a document——

Mr. O'CONNOR. You are referring to memorandum for Ickes from Jennifer O'Connor?

Mr. BENNETT. That's correct.

Mr. O'CONNOR. Who is a staffer for——

Mr. BENNETT. That's correct. Sir, to my knowledge, Jennifer O'Connor is not related to you and I am not suggesting that she is.

Mr. O'CONNOR. No, she isn't.

Mr. BENNETT. I don't even know that you have seen this document before. I assume you have not seen this document before, have you, sir?

Mr. O'CONNOR. No, I haven't seen it.

Mr. BENNETT. Just so you understand, the document was not produced by you. I am just bringing to your attention the fact that your time records reflect Mr. Schneider speaking with Mr. Ickes requesting on May 16, the memorandum dated May 18 reflects that the day before, May 17th, the day after Schneider spoke with Ickes, the staff of Harold Ickes had determined to reject the casino application.

You don't have any knowledge of those meetings, do you, sir?

Mr. O'CONNOR. No.

Mr. BENNETT. If I can, Mr. O'Connor, stepping back a minute in terms of your attempted contacts with the White House, looking at exhibit 356, page 35, your time entries for April 24, 1995. On that day, April 24, 1995, you in fact spoke with President Clinton directly about the Hudson Dog Track issue, didn't you, Mr. O'Connor?

Mr. O'CONNOR. Yes.

Mr. BENNETT. And in fact the President became involved, and he spoke with Bruce Lindsey who called back to the White House from Air Force One; isn't that correct?

Mr. O'CONNOR. I don't know about his callback. But I did meet with the President, and I did meet on that date in Minneapolis with Bruce Lindsey.

Mr. BENNETT. And, in fact, you had been trying to get ahold of a woman named Loretta Avent at the White House and had had some difficulty, and as a result of this discussion that same day, Ms. Avent did in fact contact you; isn't that correct?

Mr. O'CONNOR. I was having difficulty getting through to Loretta, do you pronounce it "Avent"?

Mr. BENNETT. Avent, I believe is how she pronounces it.

Mr. O'CONNOR. Avent.

Mr. BENNETT. She, in fact, that same date as a result of your speaking directly with the President, getting President Clinton involved in this process, you did receive a response back from Ms. Avent; isn't that correct?

Mr. O'CONNOR. That's correct.

Mr. BENNETT. Now, sir, I will show you exhibits 304 and 305, and I believe in the interest of time, Mr. Chairman, that is a matter that can be addressed by members of the committee in some later questioning.

But essentially exhibits 304 and 305, one is a memorandum from Ms. Avent to Mr. Harold Ickes that same day, April 24, 1995. The other is another memorandum from Michael Schmidt of the Domestic Policy Council at the White House to Cheryl Mills of the White House Counsel's Office, again that same day, April 24, 1995.

In there there is reference, particularly as to exhibit 304, Mr. O'Connor, there is reference in the exhibit—on exhibit 304, there are comments to the effect that it's a mistake for Pat O'Connor to be trying to tie the President into this issue. And then there's direct language in that exhibit that says, I'll read it for you in the interest of time "He" meaning you, "must stop telling others that he has access to the White House on this issue." And then makes reference to this being political poison for the President.

Did either Mr. Schmidt or Ms. Avent ever criticize you or voice any objection to your contact with the President or tell you this was political poison for President Clinton, Mr. O'Connor?

[Exhibits 304 and 305 follow:]

EXECUTIVE OFFICE OF THE PRESIDENT

24-Apr-1995 07:17pm

TO: Cheryl D. Mills

FROM: Michael T. Schmidt
Domestic Policy Council

CC: Carol H. Rasco
CC: Loretta T. Avent
CC: Katharine M. Button

SUBJECT: Call from Lobbiest Pat O'Connor

Cheryl,

This e-mail is to fill you in more detail about a call that Loretta and I were on with a Lobbyist/Fundraiser named Pat O'Connor. It was half-dictated to me by Loretta via phone, so I apologize in advance if it is unwieldy at times:

Pat O'connor is a lobbyist that represents a number of gaming tribes in Wisconsin and Minnesota. He is also, I believe, a DNC trustee of some sort. He is working on some off-reservation gaming project (dog racing I think) called "the Hudson Project," which under the Indian Gaming Regulatory Act will need Secretary Babbitt's approval to go forward, since it is off reservation gaming.

Pat called Loretta last week on this issue. As you know, last year WH counsel advised Loretta that she should not meet with lobbyists or lawyers on Indian issues. Also, on April 29, the President signed a memorandum stating his strong support for the government-to-government relationship with the Tribes and direct consultation (which they hold us to in every letter they send!!). We get hit hard by Tribal leaders when we meet with Lobbyists, since many times the tribal leaders are not even aware that the lobbyists are calling us on their behalf. Loretta was out of town when Pat called, but asked Jay and Katy Button on her staff to return the calls from Pat, informing him that he needed to have the Tribal leader(s) that he represent send in whatever request that they had, and that she would work with the leaders directly. This is her standard response in these situations.

After several calls trying to get around Jay and Katy, on Wednesday of last week Pat sent in a memo from him (not from the Tribal leaders as requested) to Loretta asking to talk to her about intervening with Secretary Babbitt to allow this Hudson project to be able to do off-reservation gaming. This fax also

EXHIBIT
304-1

LOP 069076

stated that Loretta had told the leader of the Red Cliff Tribe (who Loretta has never met or spoken with) that she would intervene on their behalf (not true!). After this fax came in, Jay on Loretta's staff called Pat's office again asking for the letter from the tribal leader. It never came.

In the meantime, Pat bumped into the President today in Minnesota and mentioned to him that Loretta never returned his calls (technically true, but her staff did return them several times because she was travelling). A call came from AA1 this morning from Bruce Lindsey to Loretta to find out what had happened. Loretta reviewed the story I have written so far, and told Bruce that she would call Pat to explain our process. Loretta called me (since I do Indian Gaming Policy) and then conferenced me into a call with Mr. O'connor (her assistant Katy Button was also in on the call). And then, in Loretta's words, "his story began to unravel" in two ways: 1) He had to admit to Loretta that he had a return call from Loretta's office; 2) See the attached fax from him -- he had to back off of the statement about the leader of the Red Cliff Tribe talking to Loretta about this since it was not true. He was agitated that Loretta could not meet with him on this issue, and he took my name and number and promised to call me about this issue sometime this week, and that he would also bring it up in his meeting this Friday with Don Fowler at the DNC. He abruptly hung up before I could respond.

According to Loretta:

The first mistake Pat O'connor is making is trying to tie the President into an issue that he cannot be tied into for legal and political reasons. The White House should not be involved in this issue!

He must stop telling others that he has access to the WH on this issue. As you know, we legally cannot intervene with the Secretary of Interior on this issue.

Please have Harold call Don Fowler and explain that there are no secrets in Indian Country, that word of this conversation is already getting out and it would be political poison for the President or his staff to be anywhere near this issue.

Loretta consistently will not allow anyone take advantage of the President's best intentions and put him into potentially negative press situation (especially with 100 tribal leaders coming to town on Friday).

Loretta asks that you do whatever you think we need to do to take care of the President's best interests on this -- these Indian Gaming issues are always explosive (as the Cabazon situation made clear).

If you have any questions on any of this, call Katy Button to get ahold of Loretta in AZ, or call me at 6-5567 and I will try to

EXHIBIT 304-2

EOP 069077

give you whatever info you need.

THE WHITE HOUSE

WASHINGTON

April 24, 1995

MEMORANDUM FOR HAROLD ICKES

FROM: Loretta Avent

I just got a call from Bruce in reference to a person named Pat O'Connor, whom I don't know, who has called me on numerous occasions. Unfortunately, I was on my reservation circuit, so I asked both Jay Campbell and Katy Button in my office to call and advise him I was travelling and that before I could respond personally, I would need a letter from one of the tribal leaders he was representing explaining their situation and/or their concerns. Following the legal advice we have received concerning these kinds of issues, I have not and would not speak with him, or any lobbyist or lawyer.

Irrespective of lawyers and lobbyists say they know personally in the Administration , my first responsibility is to take care of the pres. because I am aware of the politics and the press surrounding this particular situation, it is in our best interest to keep it totally away from the white house in general, and the pres in particular. This is such a hot potato (like Cabazon) -- too hot to touch. The legal and political implications of our involvement would be disastrous. I am on my way into a meeting with five of our strongest tribal leaders (because of their significant voter turnout), who have already gone ballistic about other tribal governments who have greater access to the Administration because of their ability to pay hired guns (as they call them) and their belief that this unfairly gets things to happen. They believe that when the President said "Government-to-Government" and "respect for tribal consultation" that it meant directly with them. They consider the lobbyists and lawyers trying to access us as staff they (the tribal leaders) pay and that their responsibility is to report and advise them (the tribal leaders), and as tribal leaders elected by their membership, they will do the business of tribal governments directly with our government.

This puts us in a Catch-22 To ensure we don't get caught in this web, I treat all 550 elected tribal leaders the same (I deal directly with them on behalf of the President).

Harold, my goal is to clean up as much as I can clean up (seven reservations in less than ten days) prior to the April 28th meeting. We are 98% there. I do not want this situation to be part of or anywhere near the meeting on the 28th. This is a

EXHIBIT 305-1

EOP 069070

Department of Interior and Justice Department and that's where it should stay. Finally, the fact that he would even suggest I would discuss anything remotely connected to Indian gaming tells me he is not truly connected to Indian country (all 550 federally recognized tribes know I don't do gaming and say it!). Both Domestic Policy and Intergovernmental Affairs deal with this issue in this manner.

I explained this to Bruce and he understands the way I operate and I assured him I would make the call directly to advise the party that called. I will do this as soon as my meeting is over. I'll call later and give you an update. The press is just waiting for this kind of story. We don't need to give it to them.

One last concern leading into Friday, but I am working on that now. Because of the diversity and complexities within Indian Country and the constant changes in elected leadership, there is no lobbyist or lawyer that I will put before my responsibility to the President and his commitment to Indian Country (April 29, 1994).

cc: Maggie Williams
Cheryl Mills

Mr. O'CONNOR. I can answer that. First of all, I don't know who—I have since learned, but I don't know who Schmidt was. I don't recall him being in a conversation on the telephone with me when I talked on that date with Loretta Avent. I recall that conversation with her. It was a short conversation. But I definitely recall that conversation.

Mr. BENNETT. But no one ever voiced such criticism to you directly to your face or on the telephone?

Mr. O'CONNOR. Nothing was said by Avent, I will just say Loretta, although I've never met her.

Mr. BENNETT. I understand.

Mr. O'CONNOR. Nothing was said in that conversation criticizing me for anything.

Mr. BENNETT. Or telling you to stay away from the President on this issue or this could be political poison for the President?

Mr. O'CONNOR. No.

Mr. BENNETT. Directing your attention, just wrapping up here, Mr. Chairman, these last 2 minutes of my time, for exhibit 356, again I believe it is page 39, Counsel, your entries from May 24, 1995, Mr. O'Connor. You, in fact, billed your client for time you spent, dinner with Vice President Gore. Apparently, Vice President Gore also became involved in assisting you in stopping the application of the Wisconsin Indian tribe?

Mr. O'CONNOR. No. Mr. Gore did not get involved with me. In connection with that note that was recorded on that date, my time, that was not a dinner. That was a reception and that was an error on my part putting down dinner. It was a reception.

Mr. BENNETT. But your client, it is contained in your client's billing records with respect to the contact with Vice President Gore.

Mr. O'CONNOR. I did not contact Vice President Gore then or any other time. But the indication in there was a Gore dinner, it was a Gore reception, and I think that just placed the event. It was at the Mayflower.

Mr. BENNETT. Sir, my time is about to run out. I don't mean to interrupt you, but I believe others can perhaps followup on the matter of Vice President Gore. Just one last question, as my time is expiring.

Exhibit 357 is your calendar book, sir. And on page 23 of that exhibit are entries from May 5, 1995. And I will conclude with this very question, Mr. Chairman.

Mr. LEEPER. What date, Mr. Bennett?

Mr. BENNETT. May 5, 1995, Counsel.

And the entry is also on the television monitor here in the hearing room. In that entry, on May 5, 1995, Mr. O'Connor, you will note there is an entry that underneath the Hudson Dog Track category says, "Indians," dash, "50 DNC," and then it references Larry Kitto, who I believe was the consultant with you on this matter, and it also references the Committee to Re-elect. In fact, that is a direct reference to political contributions that were in fact to be made by your client, the St. Croix Indian Tribe, isn't that correct, Mr. O'Connor?

[Exhibit 357 follows:]

20 FRIDAY
JANUARY 20, 1995
APPOINTMENTS & SCHEDULED EVENTS

REDACTED MATERIAL

FRIDAY **20**
Wk 3 • Day 20, 345 Left JANUARY 20, 1995
DIARY AND WORK RECORD

HRS 8 9 10 11 12 1 2 3 4 5

REDACTED MATERIAL

12: Jom Corcoran file – discussions with Corcoran

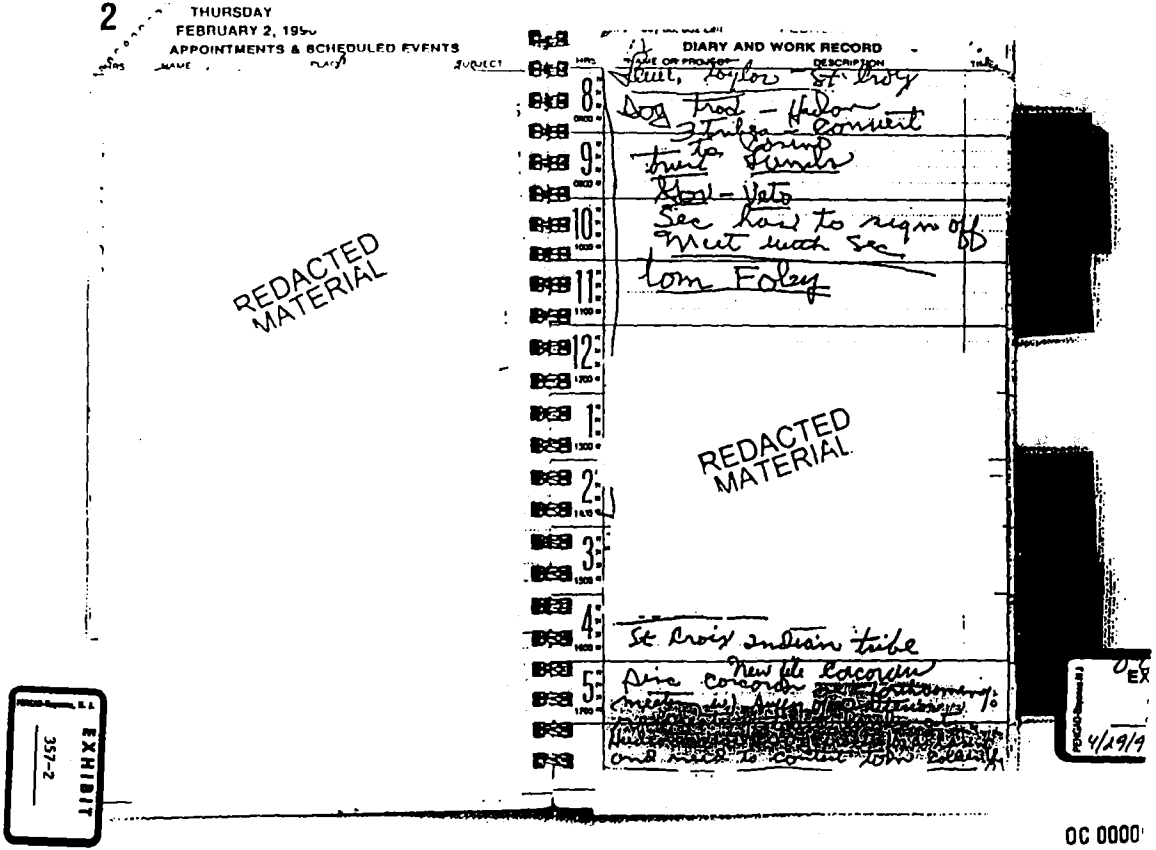
REDACTED MATERIAL

[redacted]

[redacted]

EXHIBIT
357-1

OC 0


2
THURSDAY
FEBRUARY 2, 1950
APPOINTMENTS & SCHEDULED EVENTS
DIARY AND WORK RECORD
Stuit, Taylor - St. Croix
Dog Trod. - Hilton
Tribe - Concert
Tom Foley
St Croix Indian tribe
REDACTED MATERIAL
REDACTED MATERIAL
EXHIBIT
357-2
4/19/9
OC 0000

MONDAY
FEBRUARY 6, 1995
APPOINTMENTS & SCHEDULED EVENTS

MONDAY
FEBRUARY 6, 1995
DIARY AND WORK RECORD

REDACTED MATERIAL

REDACTED MATERIAL

REDACTED MATERIAL

REDACTED MATERIAL

EXPENSE & REIMBURSEMENT RECORD:

EXHIBIT
357-3

OC 000082

TUESDAY
FEBRUARY 7, 1995
APPOINTMENTS & SCHEDULED EVENTS
DIARY AND WORK RECORD
FEBRUARY 7, 1995
TO BE DONE TODAY (ACTION LIST)
EXPENSE & REIMBURSEMENT RECORD:
REDACTED MATERIAL
EXHIBIT
357-4

WEDNESDAY
FEBRUARY 8, 1995
DIARY AND WORK RECORD
APPOINTMENTS & SCHEDULED EVENTS
TO BE DONE TODAY (ACTION LIST)
EXPENSE & REIMBURSEMENT RECORD:
REDACTED MATERIAL
REDACTED MATERIAL
REDACTED MATERIAL
EXHIBIT
357-5

11 SATURDAY FEBRUARY 11, 1995

APPOINTMENTS & SCHEDULED EVENTS

NAME | PLACE | SUBJECT

11 SATURDAY FEBRUARY 11, 1995

Wk 6 • Day 42, 323 Left

DIARY AND WORK RECORD

LANGLEY PROJECT

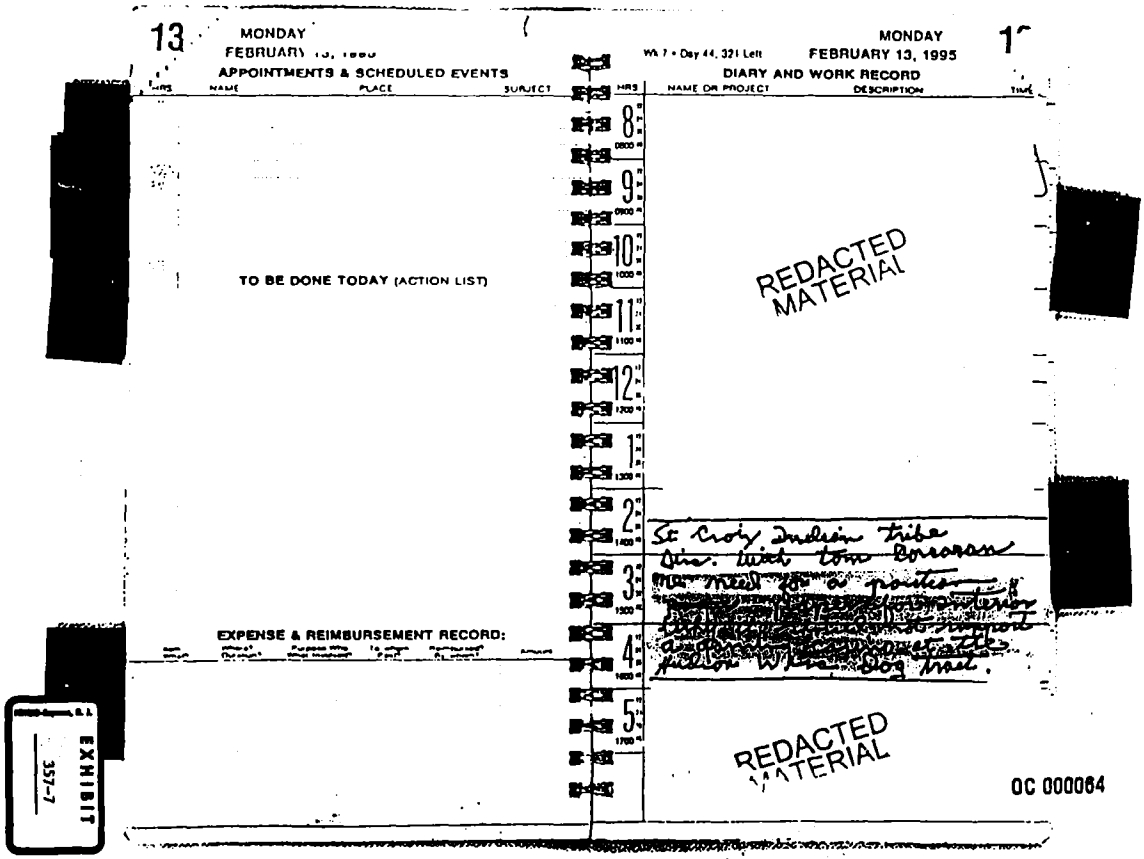
DESCRIPTION

REDACTED MATERIAL

REDACTED MATERIAL

EXPENSE &REIMBURSEMENT RECORD:

EXHIBIT 357-6


13
MONDAY
FEBRUARY 13, 1995
APPOINTMENTS & SCHEDULED EVENTS
HRS
NAME
PLACE
SUBJECT
TO BE DONE TODAY (ACTION LIST)
EXPENSE & REIMBURSEMENT RECORD:
Wk 7 • Day 44, 321 Left
MONDAY
FEBRUARY 13, 1995
DIARY AND WORK RECORD
HRS
NAME OR PROJECT
DESCRIPTION
TIME
REDACTED MATERIAL
St Croix Indian tribe
REDACTED MATERIAL
EXHIBIT
55-7
OC 000064

REDACTED MATERIAL

Meeting at Interior with Tom Corcoran, Larry Kitt, AMAA Tom Collins, Kathleen Wynne, DNC with Trump Administration Chairman Don Fowler

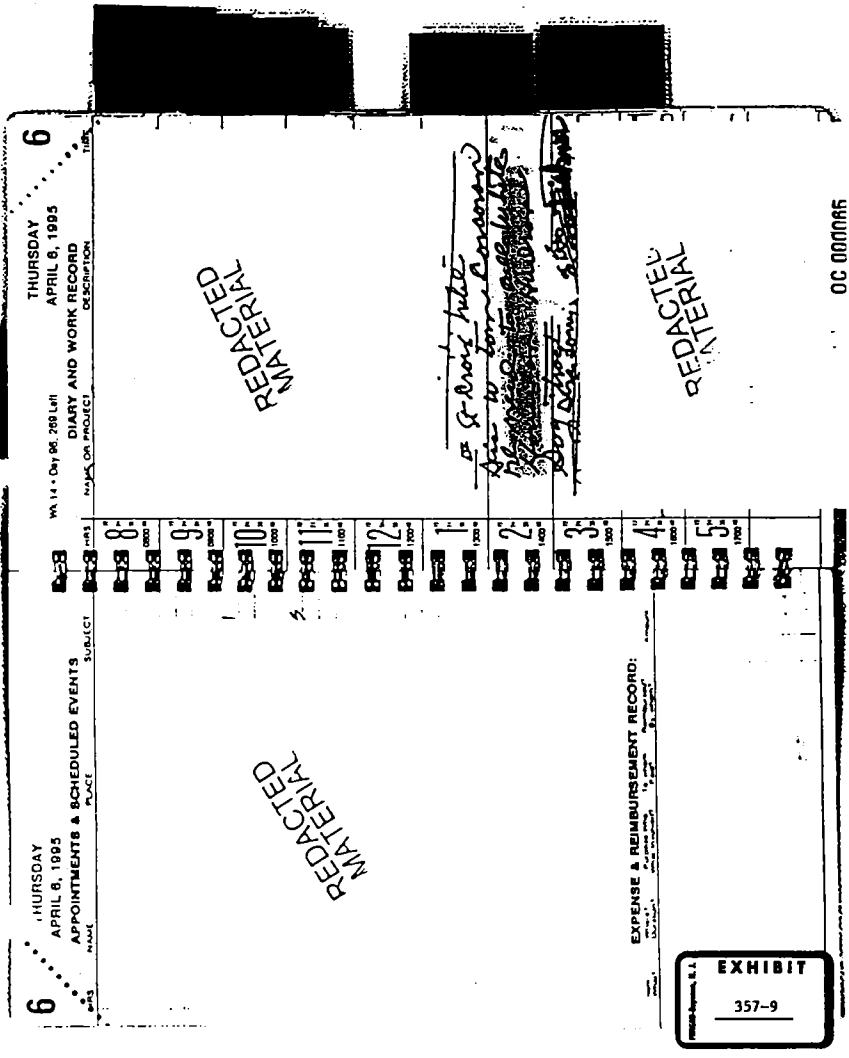
03/15/95

REDACTED MATERIAL

Discussion with Tom Corcoran regarding meetings at Interior and DNC.

03/16/95

EXHIBIT
357-8

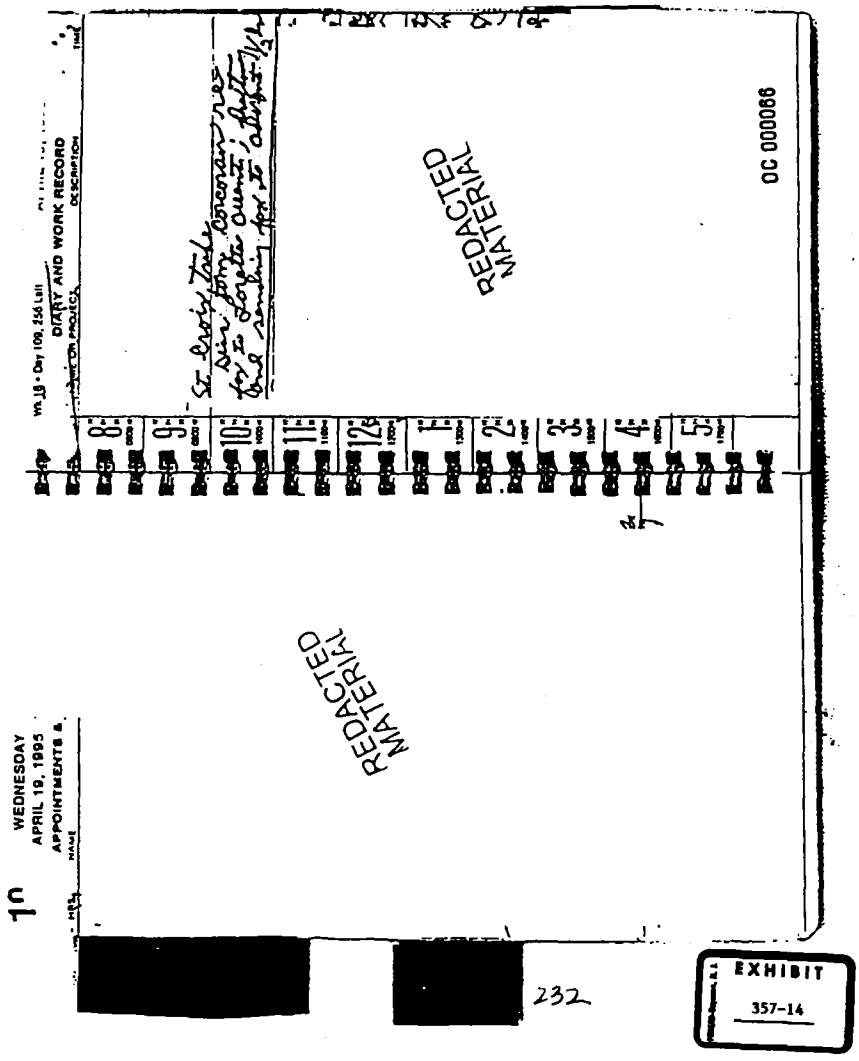

THURSDAY
APRIL 6, 1995
APPOINTMENTS & SCHEDULED EVENTS
DIARY AND WORK RECORD
REDACTED MATERIAL
REDACTED MATERIAL
REDACTED MATERIAL
EXPENSE & REIMBURSEMENT RECORD:
EXHIBIT
357-9

FRIDAY
APRIL 7, 1995
APPOINTMENTS & SCHEDULED EVENTS
DIARY AND WORK RECORD
APRIL 7, 1
REDACTED MATERIAL
REDACTED MATERIAL
REDACTED MATERIAL
EXPENSE & REIMBURSEMENT RECORD:
OC 000047
EXHIBIT
357-10

MONDAY
APRIL 10, 1995
DIARY AND WORK RECORD
DESCRIPTION
REDACTED MATERIAL
REDACTED MATERIAL
REDACTED MATERIAL
MONDAY
APRIL 10, 1995
APPOINTMENTS & SCHEDULED EVENTS
EXHIBIT
357-11

17
MONDAY
APRIL 17, 1995
APPOINTMENTS & SCHEDULED EVENTS
17
MONDAY
APRIL 17, 1995
DIARY AND WORK RECORD
REDACTED MATERIAL
REDACTED MATERIAL
REDACTED MATERIAL
EXHIBIT
357-12

APRIL 18, 1995
DIARY AND WORK RECORD
APPOINTMENTS & SCHEDULED EVENTS
REDACTED MATERIAL
REDACTED MATERIAL
EXHIBIT
357-13


DIARY AND WORK RECORD
REDACTED MATERIAL
REDACTED MATERIAL
OC 000086
WEDNESDAY
APRIL 19, 1995
APPOINTMENTS &
232
EXHIBIT
357-14

22 SATURDAY APRIL 22, 1995

APPOINTMENTS & SCHEDULED EVENTS

TIME | NAME | PLACE | SUBJECT

TO BE DONE TODAY (ACTION LIST)

EXPENSE & REIMBURSEMENT RECORD:

WK 16 • Day 112, 253 Left

APRIL 22, 1995

DIARY AND WORK RECORD

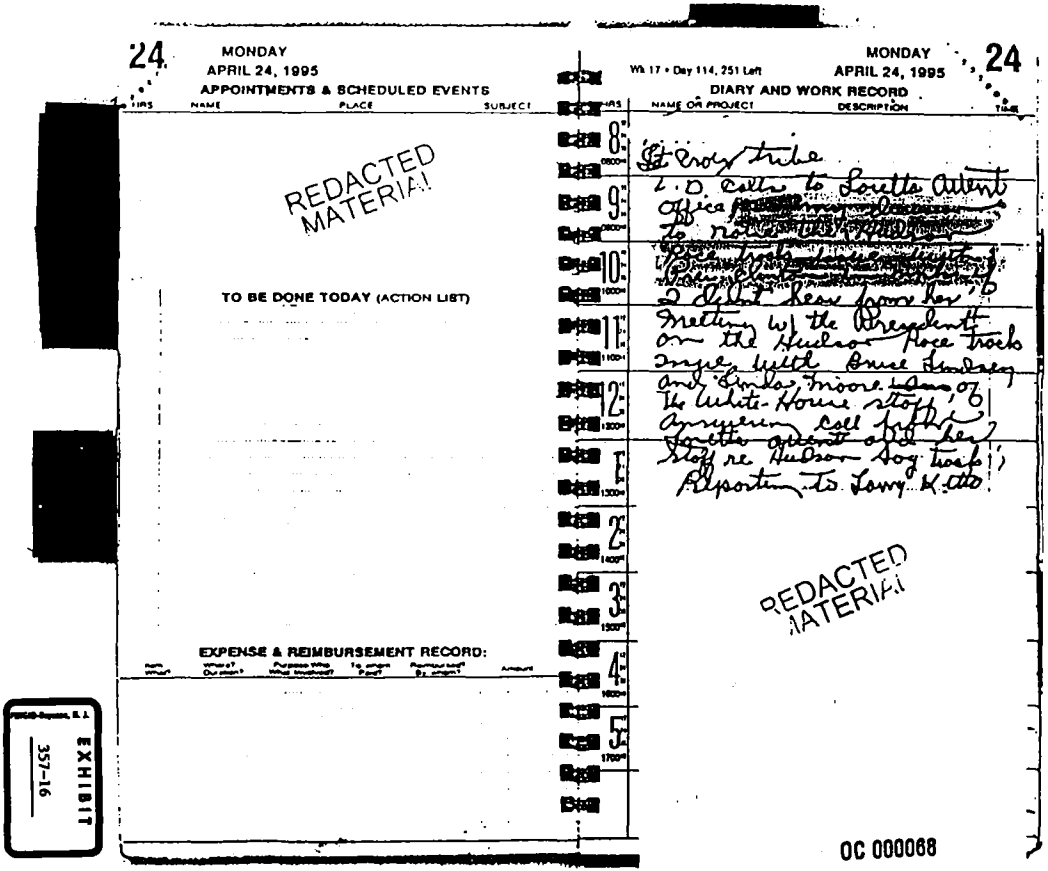
DESCRIPTION

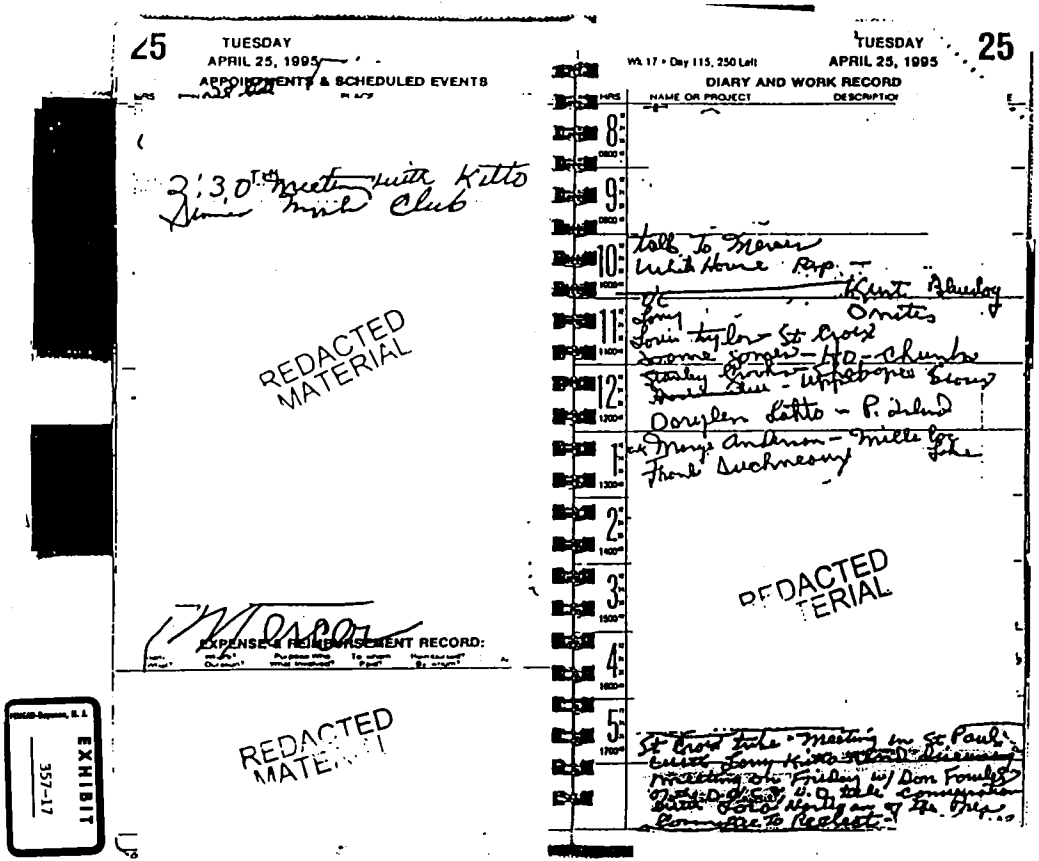
REDACTED MATERIAL

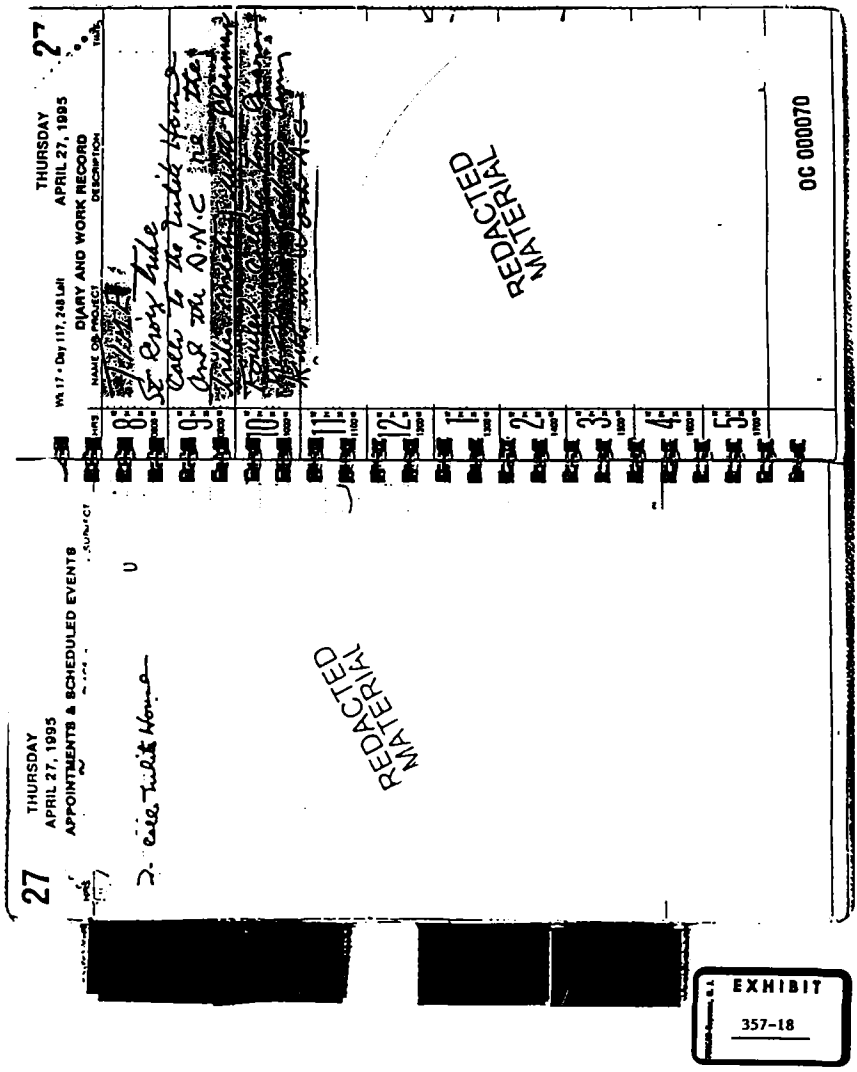
OC 000067

EXHIBIT

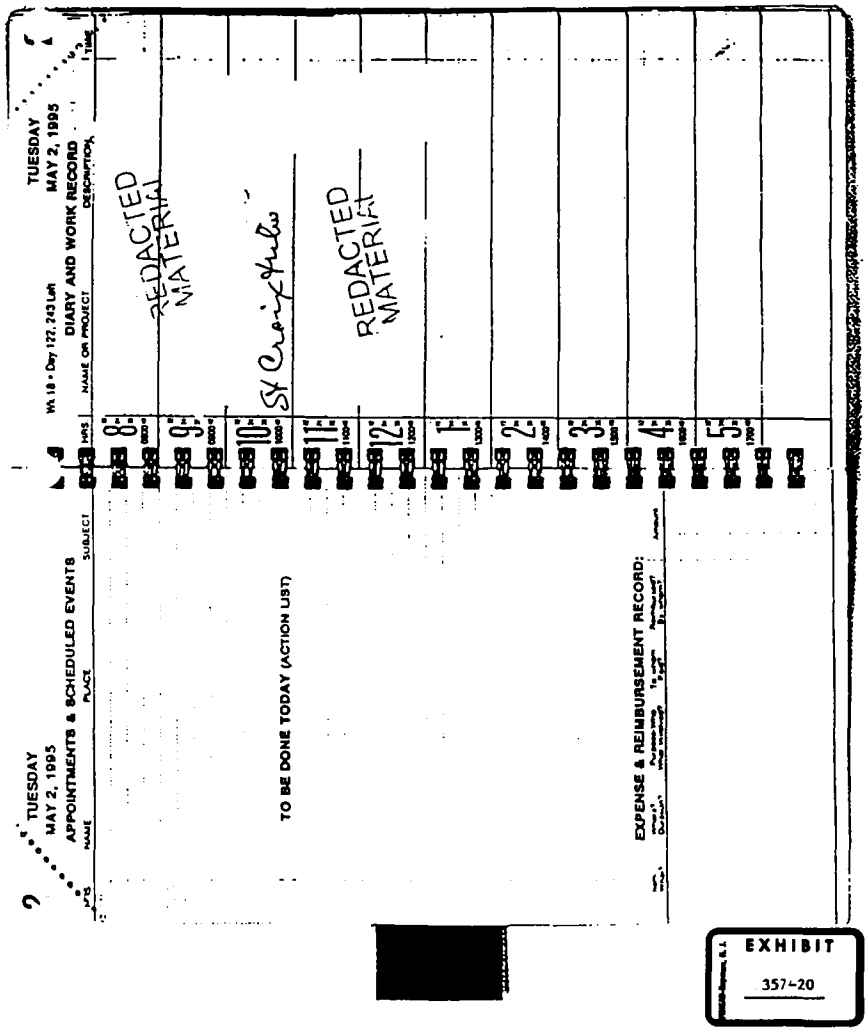
357-15

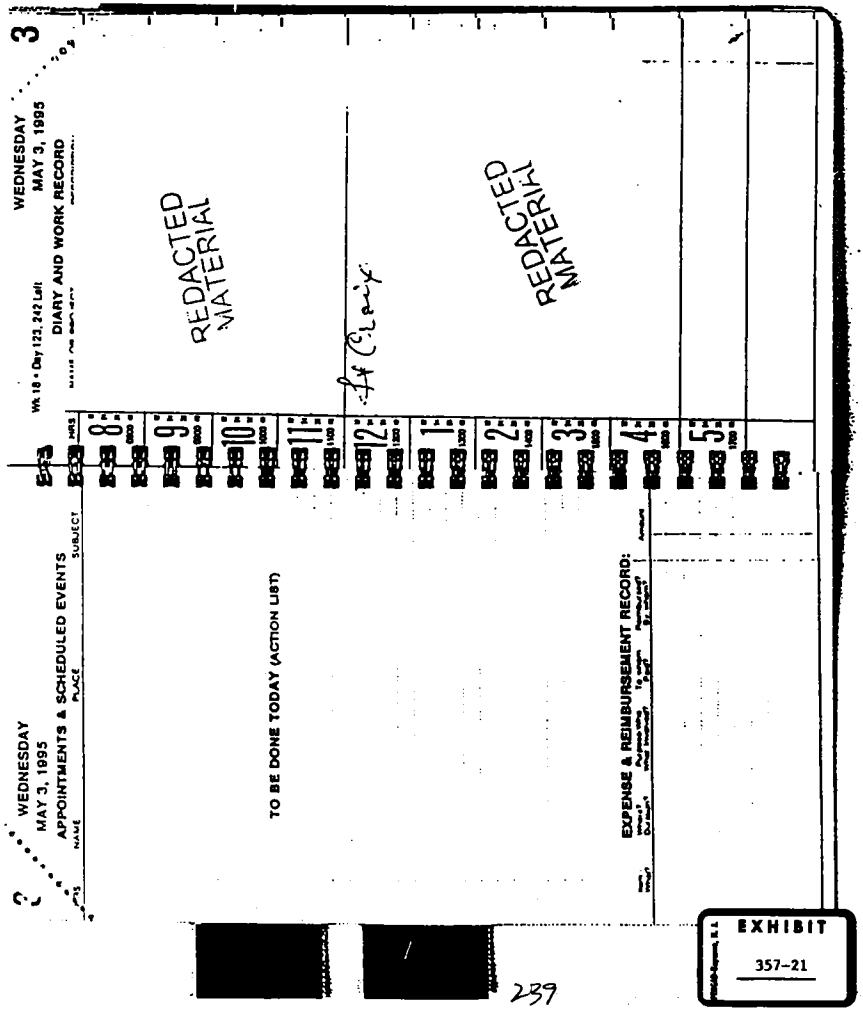

24
MONDAY
APRIL 24, 1995
APPOINTMENTS & SCHEDULED EVENTS
TIME
NAME
PLACE
SUBJECT
REDACTED MATERIAL
TO BE DONE TODAY (ACTION LIST)
EXPENSE & REIMBURSEMENT RECORD:
Wk 17 • Day 114, 251 Left
MONDAY
APRIL 24, 1995
24
DIARY AND WORK RECORD
NAME OR PROJECT
DESCRIPTION
TIME
8
9
10
11
12
1
2
3
4
5
L.D. calls to Loretta Arrent
Meeting w/ the President
on the Hudson River tracks
Issue with Bruce Lindsey
and Linda Moore Lowe of
The White House staff,
Arrangements call from
Loretta Arrent also her
staff re Hudson River tracks
Reporting to Larry Kitto
REDACTED MATERIAL
EXHIBIT
357-16
OC 000068


25 TUESDAY APRIL 25, 1995
APPOINTMENTS & SCHEDULED EVENTS
2:30 Meeting with Kitto
Dinner Mark Club
REDACTED MATERIAL
EXPENSE & REIMBURSEMENT RECORD:
REDACTED MATERIAL
EXHIBIT 357-17
TUESDAY APRIL 25, 1995 25
Wk 17 • Day 115, 250 Left
DIARY AND WORK RECORD
NAME OR PROJECT DESCRIPTION
8 9 10 11 12 1 2 3 4 5
talk to Mercer
Child Home Rep
Kent Bleuler
Omnitec
Tony
Louis Tyler - St Croix
Jerome Jones - LPO - Chumbo
Stanley Archer - Upsetbopus Bloomy
David Lee - Upsetbopus Bloomy
Douglas Latto - P. Island
Mary Anderson - Mills Corp
Frank Duchnessny
REDACTED MATERIAL
St Croix Title - Meeting in St Paul's
with Tony Kiss
meeting on Friday w/ Don Fowler
D.C. to talk communication
with Gold Nights & the Ship
Committee to Reelect


27
THURSDAY
APRIL 27, 1995
APPOINTMENTS & SCHEDULED EVENTS
27
THURSDAY
APRIL 27, 1995
DIARY AND WORK RECORD
REDACTED MATERIAL
REDACTED MATERIAL
OC 000070
EXHIBIT
357-18

MONDAY
MAY 1, 1995
1
DIARY AND WORK RECORD
NAME OR PROJECT
DESCRIPTION
REDACTED MATERIAL
St Craig Hicks
MONDAY
MAY 1, 1995
APPOINTMENTS & SCHEDULED EVENTS
PLACE
SUBJECT
TO BE DONE TODAY (ACTION LIST)
EXPENSE & REIMBURSEMENT RECORD:
EXHIBIT
357-19


TUESDAY
MAY 2, 1995
APPOINTMENTS & SCHEDULED EVENTS
NAME
PLACE
SUBJECT
TUESDAY
MAY 2, 1995
DIARY AND WORK RECORD
NAME OR PROJECT
DESCRIPTION
REDACTED MATERIAL
SY Cruiz Hulls
REDACTED MATERIAL
TO BE DONE TODAY (ACTION LIST)
EXPENSE & REIMBURSEMENT RECORD:
EXHIBIT
357-20


WEDNESDAY
MAY 3, 1995
APPOINTMENTS & SCHEDULED EVENTS
NAME
PLACE
SUBJECT
TO BE DONE TODAY (ACTION LIST)
EXPENSE & REIMBURSEMENT RECORD:
WEDNESDAY
MAY 3, 1995
DIARY AND WORK RECORD
REDACTED MATERIAL
REDACTED MATERIAL
EXHIBIT
357-21
239

4 THURSDAY MAY 4, 1995

APPOINTMENTS & SCHEDULED EVENTS

NAME | PLACE | SUBJECT

TO BE DONE TODAY (ACTION LIST)

EXPENSE & REIMBURSEMENT RECORD:

Wk 18 • Day 124, 241 Left

DIARY AND WORK RECORD

NAME OR PROJECT | DESCRIPTION

Ab Craig

REDACTED MATERIAL

4 THURSDAY MAY 4, 1995

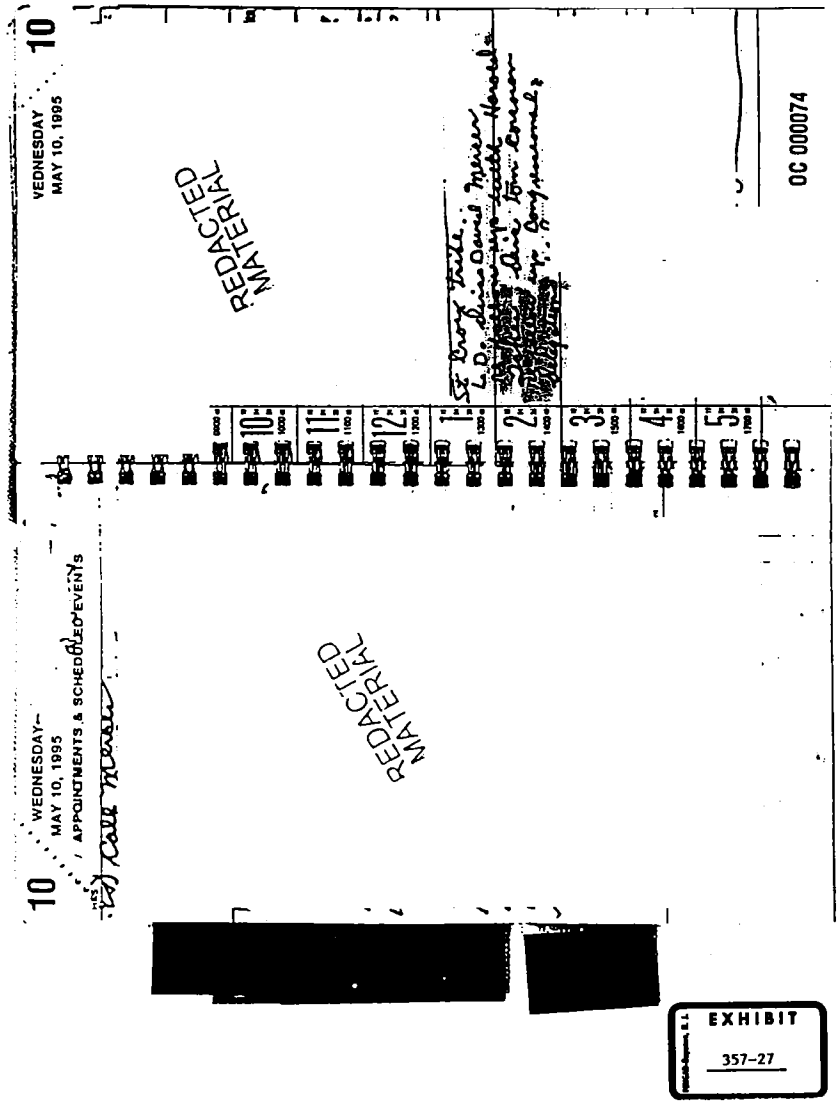
EXHIBIT 357-22

FRIDAY
5
FRIDAY
MAY 5, 1995
DIARY AND WORK RECORD
DESCRIPTION
REDACTED MATERIAL
REDACTED MATERIAL
OC 000049
EXHIBIT
357-23

SUNDAY
MAY 7, 1995
APPOINTMENTS & SCHEDULED EVENTS
DIARY AND WORK RECORD
DESCRIPTION
REDACTED
MATERIAL
TO BE DONE TODAY (ACTION LIST)
EXPENSE & REIMBURSEMENT RECORD:
EXHIBIT
357-24

8
MONDAY
MAY 8, 1995
APPOINTMENTS & SCHEDULED EVENTS
NAME
PLACE
SUBJECT
TO BE DONE TODAY (ACTION LIST)
EXPENSE & REIMBURSEMENT RECORD:
8
MONDAY
MAY 8, 1995
DIARY AND WORK RECORD
NAME OR PROJECT
DESCRIPTION
HRS
8:
9:
10:
11:
12:
1:
2:
3:
4:
5:
Se envoy trip
Announce w Tom Downey
and meeting letter to Nancy
Zafiu; Description
Letter
REDACTED MATERIAL
REDACTED MATERIAL
OC 000072
EXHIBIT
357-25

TUESDAY
MAY 9, 1995
APPOINTMENTS & SCHEDULED EVENTS
TUESDAY
MAY 9, 1995
DIARY AND WORK RECORD
REDACTED MATERIAL
REDACTED MATERIAL
REDACTED MATERIAL
EXPENSE & REIMBURSEMENT RECORD:
EXHIBIT
357-26
OC 000073


VEDNESDAY
MAY 10, 1995
10
REDACTED
MATERIAL
OC 000074
WEDNESDAY
MAY 10, 1995
APPOINTMENTS & SCHEDULED EVENTS
REDACTED
MATERIAL
EXHIBIT
357-27

FRIDAY 12
MAY 12, 1995
DIARY AND WORK RECORD
REDACTED MATERIAL
REDACTED MATERIAL
EXHIBIT
357-28

13
SATURDAY
MAY 13, 1995
APPOINTMENTS & SCHEDULED EVENTS
13
SATURDAY
MAY 13, 1995
DIARY AND WORK RECORD
NAME OR PROJECT
DESCRIPTION
REDACTED MATERIAL
REDACTED MATERIAL
REDACTED MATERIAL
EXHIBIT
357-29
OC 000052

14
SUNDAY
MAY 14, 1995
APPOINTMENTS & SCHEDULED EVENTS
SUBJECT
SUNDAY
MAY 1995
DIARY AND WORK RECORD
REDACTED
MATERIAL
REDACTED
MATERIAL
EXHIBIT
357-30

15
MONDAY
MAY 15, 1995
APPOINTMENTS & SCHEDULED EVENTS
15
MONDAY
MAY 15, 1995
DIARY AND WORK RECORD
DESCRIPTION
REDACTED MATERIAL
REDACTED MATERIAL
BE DONE TODAY (ACTION LIST)
EXPENSE & REIMBURSEMENT RECORD:
EXHIBIT
357-31
OC 000076

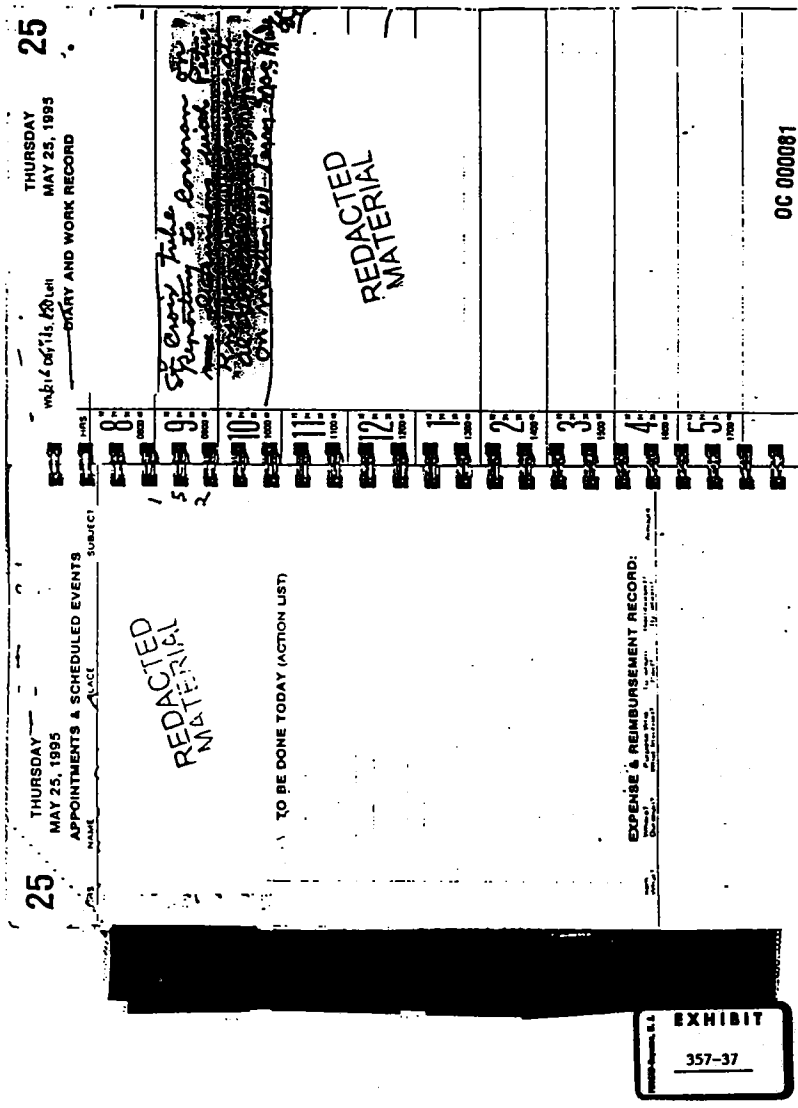
EXHIBIT
357-32

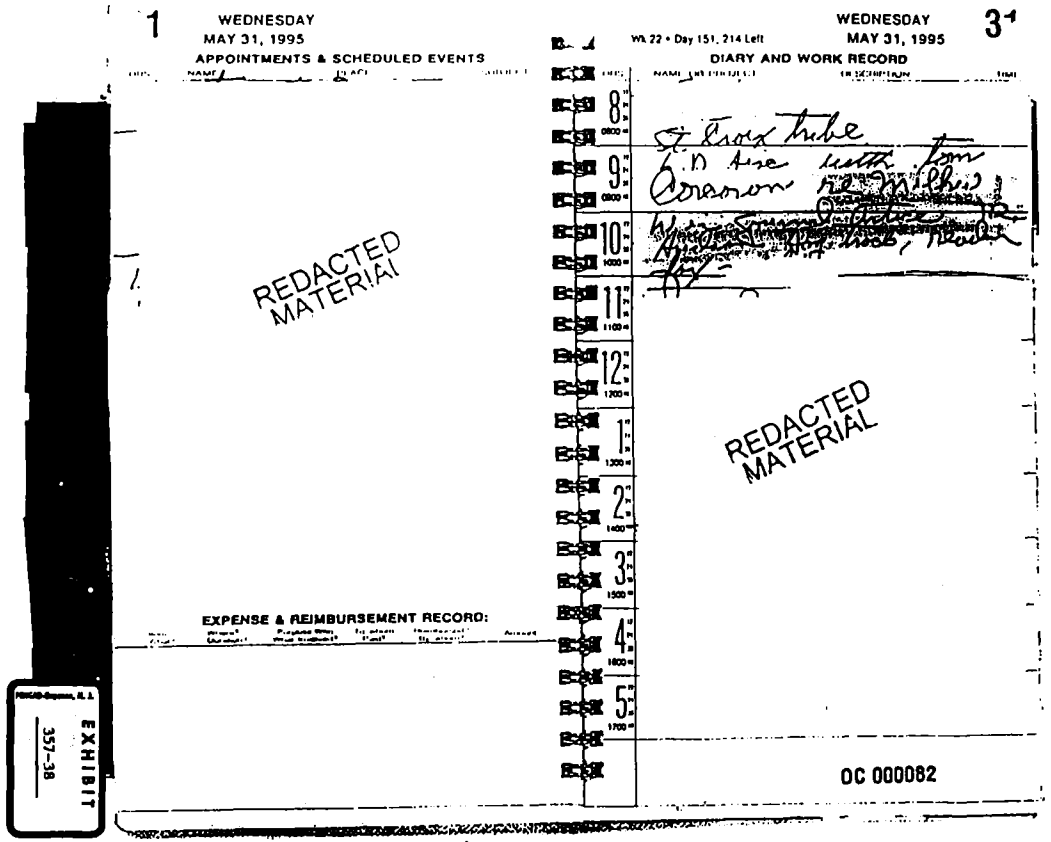
WEDNESDAY
MAY 17, 1995
17
APPOINTMENTS & SCHEDULED EVENTS
DIARY AND WORK RECORD
EXPENSE & REIMBURSEMENT RECORD:
REDACTED MATERIAL
REDACTED MATERIAL
REDACTED MATERIAL
OC 000078
EXHIBIT
357-33

FRIDAY
19
MAY 19, 1995
APPOINTMENTS & SCHEDULED EVENTS
DIARY AND WORK RECORD
MAY 19, 1995
FRIDAY
9
REDACTED MATERIAL
REDACTED MATERIAL
EXPENSE & REIMBURSEMENT RECORD:
EXHIBIT
357-34

TUESDAY
MAY 23, 1995
APPOINTMENTS & SCHEDULED EVENTS
SUBJECT
23
TUESDAY
MAY 23, 1995
DIARY AND WORK RECORD
NAME OR PROJECT
DESCRIPTION
23
8:
9:
10:
11:
12:
1:
2:
3:
4:
5:
Ed Brick Tribe
Meeting with Larry Kuttz
and Mary Mae Ashlye
REDACTED
REDACTED
EXHIBIT
357-35

WEDNESDAY
MAY 24, 1995
24
DIARY AND WORK RECORD
APPOINTMENTS & SCHEDULED EVENTS
TO BE DONE TODAY (ACTION LIST)
EXPENSE & REIMBURSEMENT RECORD:
REDACTED MATERIAL
REDACTED MATERIAL
OC 000080
EXHIBIT
357-36


25
THURSDAY
MAY 25, 1995
APPOINTMENTS & SCHEDULED EVENTS
DIARY AND WORK RECORD
REDACTED MATERIAL
TO BE DONE TODAY (ACTION LIST)
EXPENSE & REIMBURSEMENT RECORD:
EXHIBIT
357-37
OC 000081


1
WEDNESDAY
MAY 31, 1995
APPOINTMENTS & SCHEDULED EVENTS
WEDNESDAY
MAY 31, 1995
DIARY AND WORK RECORD
REDACTED MATERIAL
REDACTED MATERIAL
EXPENSE & REIMBURSEMENT RECORD:
EXHIBIT
357-38
OC 000082

TUESDAY
JUNE 6, 1995
APPOINTMENTS & SCHEDULED EVENTS
TUESDAY
JUNE 6, 1995
DIARY AND WORK RECORD
REDACTED MATERIAL
REDACTED MATERIAL
EXPENSE & REIMBURSEMENT RECORD:
OC 000083
EXHIBIT
357-39

12
MONDAY
JUNE 12, 1995
APPOINTMENTS & SCHEDULED EVENTS
PLACE
SUBJECT
wk 24 • Day 163, 202 left
DIARY AND WORK RECORD
DESCRIPTION
REDACTED MATERIAL
REDACTED MATERIAL
EXHIBIT
357-40

19
MONDAY
JUNE 19, 1995
APPOINTMENTS & SCHEDULED EVENTS
NAME
PLACE
SUBJECT
1 Cole, Tony Moe H
REDACTED MATERIAL
4 - Lunch w/ Lewis
2) Lunch - Sawyer
3) D.N.C. - Comm to Re
4) Letter from up
5) What about Zaki
6) What about Foley
MONDAY
JUNE 19, 1995
DIARY AND WORK RECORD
DESCRIPTION
to Brady Suite
EXPENSE & REIMBURSEMENT RECORD:
EXHIBIT
357-41
OC 000085

29 THURSDAY JUNE 29, 1995

APPOINTMENTS & SCHEDULED EVENTS

NAME | PLACE | SUBJECT

TO BE DONE TODAY (ACTION LIST)

EXPENSE & REIMBURSEMENT RECORD:

Wk 26 • Day 180, 185 Left

DIARY AND WORK RECORD

NAME OR PROJECT | DESCRIPTION | TIME

REDACTED MATERIAL

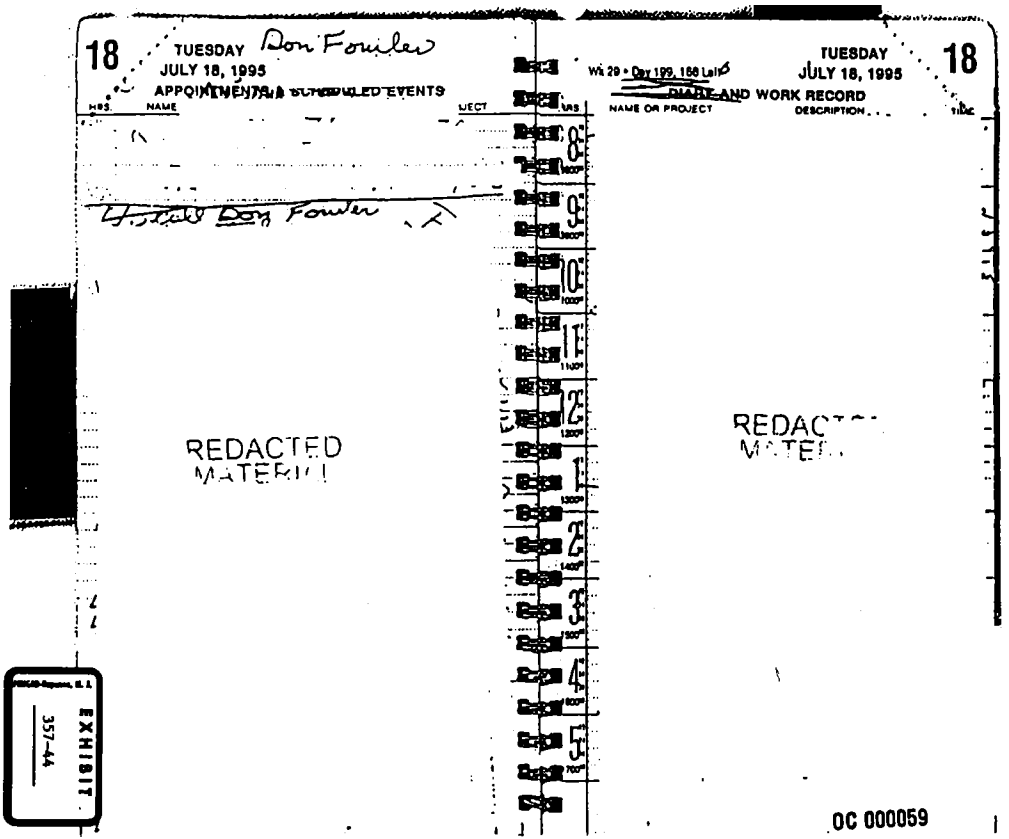
8 9 10 11 12 1 2 3 4 5

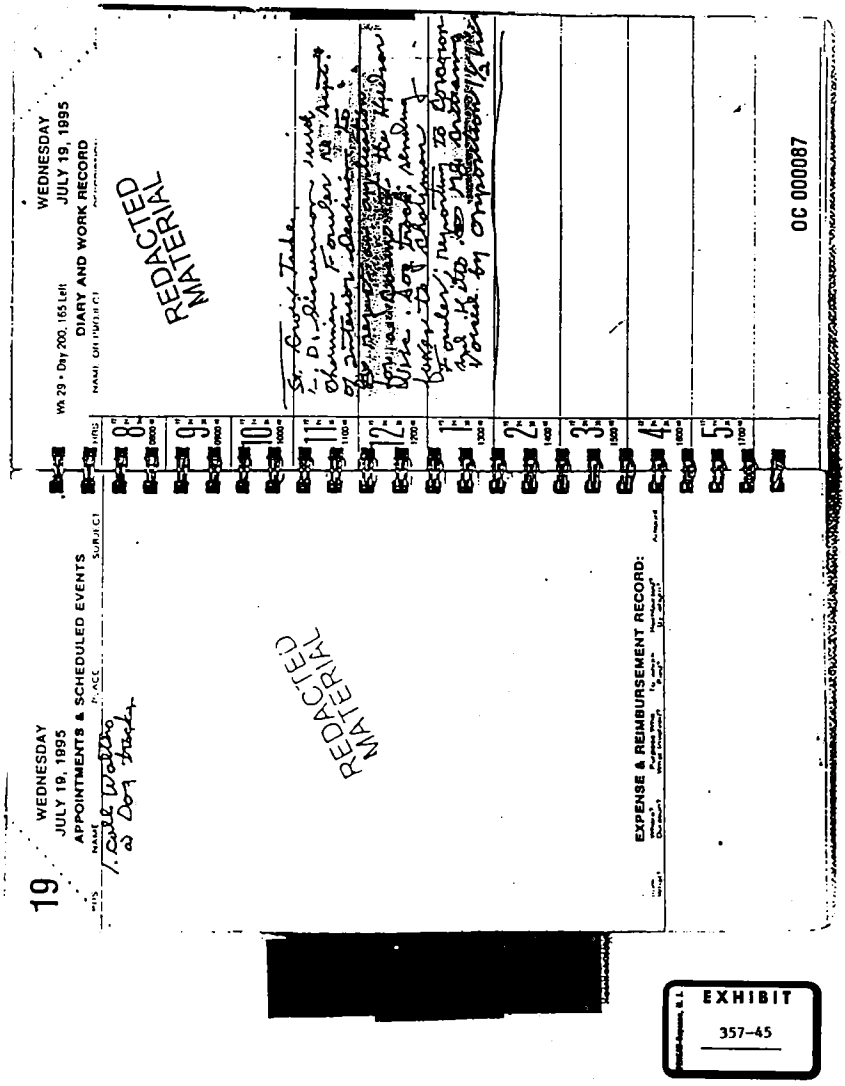
Steering Committee Meeting Update for Coleman Brief

29 THURSDAY JUNE 29, 1995

EXHIBIT 357-42

FRIDAY
JULY 14, 1995
APPOINTMENTS & SCHEDULED EVENTS
DIARY AND WORK RECORD
REDACTED MATERIAL
REDACTED MATERIAL
2 P.M.
OC 000086
EXHIBIT
357-43

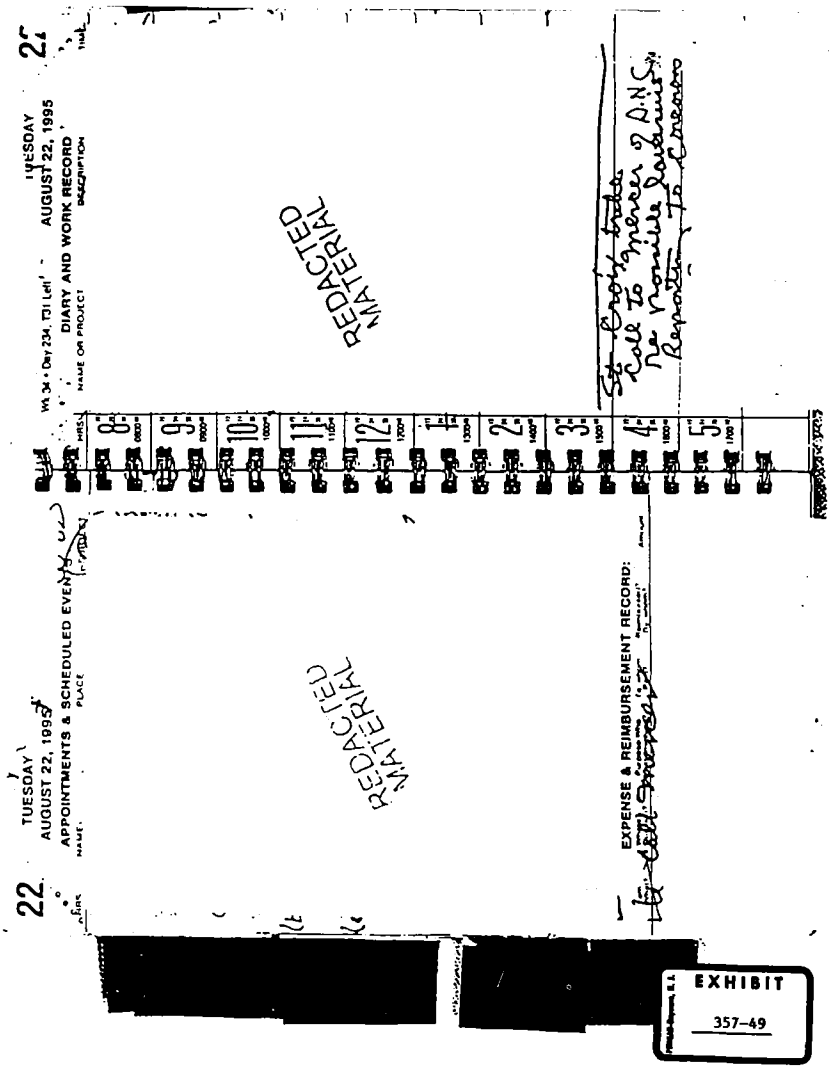

18
TUESDAY
JULY 18, 1995
Don Fowler
APPOINTMENTS & SCHEDULED EVENTS
HRS.
NAME
JECT
Hosted Don Fowler
REDACTED
MATERIAL
Wk 29 • Day 199, 166 Left
DIARY AND WORK RECORD
NAME OR PROJECT
DESCRIPTION
TUESDAY
JULY 18, 1995
18
REDACTED
MATERIAL
EXHIBIT
357-44
OC 000059

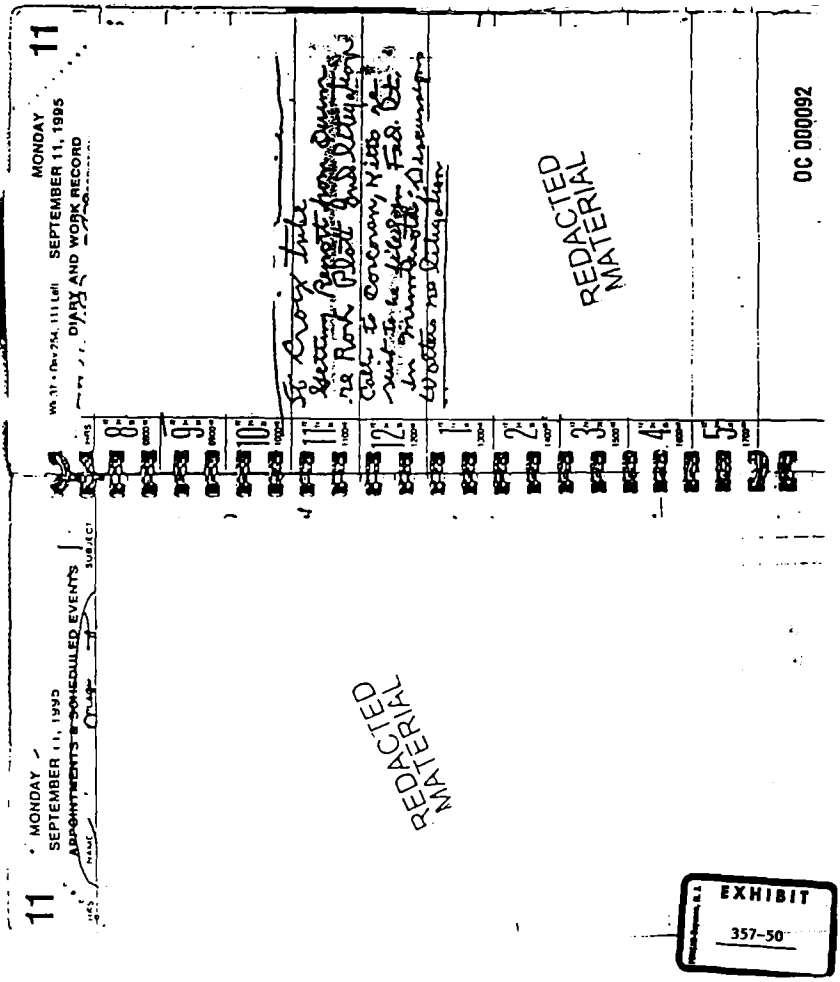

19
WEDNESDAY
JULY 19, 1995
APPOINTMENTS & SCHEDULED EVENTS
WEDNESDAY
JULY 19, 1995
WA 29 - Day 200, 165 Left
DIARY AND WORK RECORD
REDACTED MATERIAL
REDACTED MATERIAL
EXPENSE & REIMBURSEMENT RECORD:
OC 000087
EXHIBIT
357-45

20
THURSDAY
JULY 20, 1995
APPOINTMENTS & SCHEDULED EVENTS
NAME
PLACE
SUBJECT
THURSDAY
JULY 20, 1995
DIARY AND WORK RECORD
DESCRIPTION
TO BE DONE TODAY (ACTION LIST)
REDACTED MATERIAL
REDACTED MATERIAL
EXPENSE & REIMBURSEMENT RECORD:
OC 000088
EXHIBIT
357-46

THURSDAY
AUGUST 17, 1995
APPOINTMENTS & SCHEDULED EVENTS
THURSDAY
AUGUST 17, 1995
DIARY AND WORK RECORD
REDACTED MATERIAL
REDACTED MATERIAL
EXHIBIT
357-47

MONDAY
21
AUGUST 21, 1995
APPOINTMENTS & SCHEDULED EVENTS
REDACTED MATERIAL
REDACTED MATERIAL
OC 000090
EXHIBIT
357-48


22
TUESDAY
AUGUST 22, 1995
APPOINTMENTS & SCHEDULED EVENTS
NAME
PLACE
REDACTED MATERIAL
REDACTED MATERIAL
EXPENSE & REIMBURSEMENT RECORD:
23
TUESDAY
AUGUST 22, 1995
DIARY AND WORK RECORD
NAME OR PROJECT
DESCRIPTION
REDACTED MATERIAL
EXHIBIT
357-49
OC 000091


MONDAY 11
SEPTEMBER 11, 1995
DIARY AND WORK RECORD
MONDAY 11
SEPTEMBER 11, 1995
APPOINTMENTS & SCHEDULED EVENTS
REDACTED MATERIAL
REDACTED MATERIAL
EXHIBIT
357-50
OC 000092

Mr. O'CONNOR. Counsel, what you are referring to there is part of No. 3. And counsel, as you are aware, in my day timer on the left-hand side are notes that I make to refresh—or to remind me of certain things. It does not contain any recording of billing. And so these comments relate to the Committee to Re-elect.

Mr. BENNETT. Mr. O'Connor, in concluding, sir, in fact, along with the notation in your calendar of "50" dash "DNC" with respect to the St. Croix Indian Tribe, in fact, sir, that is exactly the amount of money, $50,000, that the St. Croix Indian Tribe contributed to the Democratic National Committee. Are you aware of that, sir?

Mr. O'CONNOR. I am aware one of the Indian tribes that we do not represent, or did not represent, made a $50,000 soft money contribution. I am aware of that.

Mr. BENNETT. Sir, I believe later there will be followup questions. There are three different contributions from your client that total exactly $50,000, and I am asking you, sir, whether or not that is a specific entry in your calendar to the political contribution that was going to be required of your client.

Mr. O'CONNOR. If they made a $50,000 contribution, it would be, as you and I both know, in the campaign statements. I should say——

Mr. BENNETT. They are, sir, and those statements reflect those three.

Mr. O'CONNOR. And it would be in there. My reference—I don't recollect on this particular day 2½ years ago what that 50 stands for, but in my judgment, I know that $50,000 was mentioned as a goal by McAuliffe to see whether or not Kitto and I could raise $1,000 a person from 50 Indians, not just our clients but other Indians as well. And I remembered Kitto saying it is hard to raise that money from Indians because they want to tie it into an event, but he said, "I will do what I can." And my recollection as to why these things appeared on five—I don't back away from them at all, but my best judgment is that that 50 referred to a goal that was mentioned by McAuliffe, whether or not we could raise from 50 Indians $1,000 apiece.

Mr. BENNETT. I think my time is up, Mr. Chairman.

Thank you, Mr. O'Connor.

Mr. O'CONNOR. Thank you.

Mr. BURTON. Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman. And Mr. O'Connor, pleased to see you here. I am pleased I have this opportunity to ask you some questions.

You have been a lawyer for around 50 years?

Mr. O'CONNOR. Yes, Congressman.

Mr. WAXMAN. And you have helped lobby for clients for a large part of that time?

Mr. O'CONNOR. That is correct, Congressman.

Mr. WAXMAN. And I imagine you know how our political system works and how it doesn't work. It seems to me that what we have here with your work on behalf of the St. Croix Tribe is the same sort of lobbying that occurs every day in Washington, and in our State capitals, on all matter of issues. There seems to be some suggestion that something more is being made out of your lobbying

than there is, and that you were doing something improper or illegal in helping get your clients' views heard.

You are a lobbyist, you got a strategy, you are trying to get your clients' position heard by the decisionmakers?

Mr. O'CONNOR. Right.

Mr. WAXMAN. Isn't that what is going on?

Mr. O'CONNOR. That is correct.

Mr. WAXMAN. So you talk to anybody you can in politics. It helps flag the issue, helps you get meetings so you can present your clients' point of view or they can present their point of view. Isn't that what is going on?

Mr. O'CONNOR. There was nothing different, Congressman, in the way I approached this lobbying issue than I would approach any other lobbying issue.

Mr. WAXMAN. You hope you will come up with a decision that is favorable, but your job is to get the arguments to them, to let them know there is an issue there they ought to give a little extra attention to?

Mr. O'CONNOR. That is correct.

Mr. WAXMAN. OK. Now you talked to a number of people and you tried to get them to talk to others. You talked to Mr. Fowler, who is the head of the Democratic National Committee?

Mr. O'CONNOR. I did.

Mr. WAXMAN. You talked to Mr. Snyder, you talked to Mr. Schmidt, is that right? These are all fund-raisers?

Mr. O'CONNOR. I don't recall Schmidt. I checked some of these memos in the White House, and there was a Schmidt involved in—with Avent, with Loretta, but I don't recall any particular Schmidt that I talked to about contributions.

Mr. WAXMAN. Then maybe that is my error. But you talked to others——

Mr. O'CONNOR. Oh, yes.

Mr. WAXMAN [continuing]. To try to get a meeting with Harold Ickes. Did you ever have a meeting with Harold Ickes?

Mr. O'CONNOR. No.

Mr. WAXMAN. Did you ever talk to Harold Ickes?

Mr. O'CONNOR. No. He called me twice on two different days, one after another, and I returned those calls and talked to a man in his office, and that man said Ickes wasn't there, but then I asked whether or not Mr. Ickes would get back to me.

Mr. WAXMAN. Did Mr. Ickes indirectly or implicitly send a message to you that should the tribes make a contribution—that they better make a contribution if they wanted their application denied?

Mr. O'CONNOR. No.

Mr. WAXMAN. What about Secretary Babbitt? Did he make any suggestions to you, directly or indirectly?

Mr. O'CONNOR. Congressman, I never talked to Secretary Babbitt on this issue.

Mr. WAXMAN. Did you ever offer to anyone at the White House, the DNC, or the Clinton/Gore campaign that the tribes were willing to trade campaign contributions in exchange for the Department of Interior making the decision in your favor?

Mr. O'CONNOR. Absolutely not.

Mr. WAXMAN. And did anyone at the White House, the DNC, or the Clinton/Gore campaign ever tell you that a contribution from the opponent tribes would help them get the Hudson application denied?

Mr. O'CONNOR. No one from any source ever told me that.

Mr. WAXMAN. You talked to a number of people. You even talked to the head man. You talked to President Clinton. You saw him at a campaign reception, is that right?

Mr. O'CONNOR. No, it was not a campaign reception. He was in Minneapolis to address the Association of Community Colleges, and after that he came in on what we have—on what we call "meet and greet," and I was advised by someone if I wanted to greet him at that time, after that discussion, that he would be in a room nearby. And I was there, but it was not a fund-raiser.

Mr. WAXMAN. So you had an opportunity to say something to him, and you raised the question of your clients' concerns?

Mr. O'CONNOR. Yes.

Mr. WAXMAN. And then what happened? He referred you to someone else?

Mr. O'CONNOR. The President said, "Bruce, come over here and talk to Mr. O'Connor. He has a matter he wants to discuss."

Mr. WAXMAN. That was Bruce Lindsey?

Mr. O'CONNOR. Yes.

Mr. WAXMAN. And then what happened? Did you talk to Bruce Lindsey?

Mr. O'CONNOR. I talked to Bruce Lindsey.

Mr. WAXMAN. And what happened from there?

Mr. O'CONNOR. I said to Mr. Lindsey: My clients have a real concern. There is an application pending at Interior to create an off-reservation trust land at a—for a casino in Hudson, WI, which is across the river from us here, and I believe and my clients believe that the staff that is working on this in Interior is not focusing on our opposition, and why we are opposing, and the data that we submitted pointing out the adverse consequences that would occur.

Mr. WAXMAN. What did Mr. Lindsey then say or do?

Mr. O'CONNOR. Mr. Lindsey—oh, I also said, "I have been trying to reach Loretta Avent." And Mr. Lindsey said to me, "Are you going to be in your office this afternoon in Minneapolis?" I said yes. He said, "You will be getting some calls," and he said, I think, "You will get a call from Loretta Avent, and perhaps from Harold Ickes."

Mr. WAXMAN. And you did not get a call from Harold Ickes?

Mr. O'CONNOR. Oh, he called.

Mr. WAXMAN. But you didn't make contact?

Mr. O'CONNOR. We never made contact. He called twice, that day and the following day.

Mr. WAXMAN. Did you get a chance to talk to Loretta Avent?

Mr. O'CONNOR. Yes.

Mr. WAXMAN. And tell us about that conversation.

Mr. O'CONNOR. She called me and she said, "Mr. O'Connor, the reason that I haven't returned your calls is there are 400 tribes, and I only talk to the chairman or the chiefs. I do not talk to lobbyists." And she made it rather clear to me that she wasn't going to discuss this issue with me. And so I thanked her, and it was a short conversation.

Mr. WAXMAN. So you, in representing your client, tried to get the decisionmakers to focus on this issue, and it turned out the decision was made in your favor, in your clients' favor?

Mr. O'CONNOR. Yes.

Mr. WAXMAN. From your own personal knowledge, do you have any reason to believe that the Department of Interior's decision was made because of campaign contributions from your clients?

Mr. O'CONNOR. No. And Congressman, further, I failed to talk to Mr. Ickes. I tried, but I never talked to him.

Mr. WAXMAN. Well, the decision was made, and we heard from the people who made the decision.

Mr. O'CONNOR. Yes.

Mr. WAXMAN. And they told us, under oath, they made the decision because it was the right decision as they saw it on the merits. They said there was no political interference or influence, and that is the record. Do you have any reason to dispute that?

Mr. O'CONNOR. No, and my recollection is the only person in the staff that I talked to, I had a meeting with Collier, and also there was a Deputy Assistant Secretary there, a woman.

Mr. WAXMAN. Well—yes?

Mr. O'CONNOR. Sibbison. Those are the only two people that I talked to at Interior.

Mr. WAXMAN. And you made your case to them on behalf of your client?

Mr. O'CONNOR. Yes.

Mr. WAXMAN. The White House gets blamed for a lot of things that they supposedly did wrong. It sounds like in this case they did everything right, they did what they should have done. They tried to get the information, and that was it.

Mr. WAXMAN. You billed your clients for attending some fund-raising activities?

Mr. O'CONNOR. I didn't bill them, Congressman. I recorded time that I spent in some fund-raising activities for this client.

Mr. WAXMAN. That is an issue between you and your client?

Mr. O'CONNOR. Yes.

Mr. WAXMAN. That has nothing to do with the Department of Interior, the White House, Chairman Burton or myself, isn't that right?

Mr. O'CONNOR. No, nothing to do with that. I submitted my time and a partner in the office made the billing.

Mr. WAXMAN. You have been an active Democrat over the years, and you helped raise money for the campaign?

Mr. O'CONNOR. I have, for a lot of campaigns.

Mr. WAXMAN. For a lot of campaigns. And you were—in doing that, you were hoping that when Democrats are in power, you can try and get their attention and get the case made to them on behalf of your client. Is that what is going on here?

Mr. O'CONNOR. I am just a trifle hard of hearing. Could you state that again, Congressman?

Mr. WAXMAN. Well, it seems to me you had two discrete things you were doing. You were doing some fund-raising, and you were lobbying for your clients.

Mr. O'CONNOR. That is correct.

Mr. WAXMAN. And you were keeping track of the time you were spending in both areas.

Mr. O'CONNOR. Yes, that is true.

Mr. WAXMAN. What I fail to see is if that is true, what that has to do with the decision, unless the decision had to do with the money that was paid to the Democratic party.

Mr. O'CONNOR. I agree. As far as my actions were concerned, I don't see how the contributions that I was involved in or knew about had any bearing on the decision that was made by Interior. And I answered before, that I never asked anyone to—as a result of being involved in contribution, will you see that this application is denied?

Mr. WAXMAN. It is interesting just to note that no one on this committee has even talked to Harold Ickes. People think Harold Ickes might have done something. The best way to find out is to ask him. We haven't even asked him whether he did anything.

As far as you know, did Harold Ickes intervene in this whole issue?

Mr. O'CONNOR. I don't know what, if anything, Harold Ickes did. I tried to reach him on behalf of my clients on more than one occasion. I also asked others that knew him if he would look into, but I never talked to Mr. Ickes. In fact, the only time I have ever seen him is on certain briefings, and maybe two or three at the Committee to Re-elect where he gave a briefing on the status of the campaign, and I don't recall even at the briefings I even went up and shook his hand.

Mr. WAXMAN. Well, I thank you very much for your testimony. I appreciate it. I have more time, and I want to yield 5 minutes to my colleague, Mr. Lantos.

Mr. LANTOS. Thank you very much.

Mr. O'Connor, welcome.

Mr. O'CONNOR. Thank you.

Mr. LANTOS. I have often used the phrase "trivial pursuit" during the course of these hearings, and I don't think the phrase was ever more appropriate than it is today.

I am fortunate to have 17 grandchildren. One of the great joys of having grandchildren is to see how each generation rediscovers things that the rest of us, having been through those experiences, already knows. It is wonderful to see that Lassie is a new phenomenon, or Mickey Mouse or Donald Duck, or Bert and Ernie, and every time we have a new generation, these are exciting new things. But it is difficult to have a straight face when middle-aged lawyers or middle-aged Congressmen pretend to virtual naivete with respect to lobbying activities, and of course this is what we had a display of for the first half-hour of this hearing.

Now as far as I understand, there are about 10,000 lobbyists in this town, and they pursue a tremendous variety of goals and objectives, some noble, some ignoble, ranging forward from getting better schools for children to peddling tobacco. Now in what sense did this particular lobbying activity differ from any other lobbying activity that you have engaged in, or the other, whatever number it is, 10,000 lobbyists engage in?

Mr. O'CONNOR. I don't know of any difference. Lobbying, I think, is an honorable profession. I am a lobbyist, I have been a lobbyist

for a long period of time, and this was just another matter that I lobbied, along with others in our firm.

Mr. LANTOS. And one of the others in the firm, who was I believe the principal of this issue, happened to be a former Republican Member of Congress?

Mr. O'CONNOR. That is correct.

Mr. LANTOS. So you really had a former Republican Congressman and you and maybe others who lobbied on behalf of this client?

Mr. O'CONNOR. Yes.

Mr. LANTOS. Since there has been such a strained and unsuccessful attempt to tie money to lobbying, fund-raising to lobbying, let me read to you, Mr. O'Connor, a piece from the Washington Post dated November 25, 1995, describing a lobbyist's meeting with Tom DeLay, and this lobbyist was shown a book that lists the amounts and percentages of money that the 400 largest political action committees contributed to Republicans and to Democrats during the preceding cycle. Now the preceding cycle was the cycle that just preceded the great Republican sweep of 1994, and this is what the Washington Post says "By the time the lobbyist had left the Congressman's office," that is Tom Delay's office, "he knew that to be a friend of the Republican leadership, his group would have to give the party a lot more money."

So here we have, in about as distilled a fashion as we could, as to what happens in this town when political power shifts. This lobbyist apparently went in to see the Whip, and the Whip, as many other news stories indicated, expressed unhappiness of previous donation patterns and wanted those shifted. And of course, as the evidence clearly shows in the form of FEC records, that shift has now taken place.

So what I find rather amusing, perhaps I should say nauseating, is this pretense of virtual naivete in the face of a lobbying activity which, as far as I can tell, was no different from literally thousands of other lobbying actions that take place in this city and in State capitals across the country. I don't find the pattern attractive, I think we need to change it, I think we need to change it drastically, but the intent by the counsel for the other side to rediscover what lobbyists do is so strained and artificial and insincere as to boggle the mind and even the imagination.

I would merely like to ask one question, if I may, of a general nature. It seems to me that in every field of human endeavor defeat is often an orphan and victory has many parents. Isn't it customary for lobbyists—and I don't mean you—but lobbyists in general, to claim credit for things that happen even though they would have happened without their intervention? Is that a common affliction of lobbyists?

Mr. O'CONNOR. I believe it is.

Mr. LANTOS. And it is this unique affliction of lobbyists which perhaps explains why some of them have such extraordinary incomes, because they succeed in brainwashing their clients that had it not been for their unique intervention, the project would have failed?

Mr. O'CONNOR. I believe that that has happened in the past, but Congressman, in my case——

Mr. LANTOS. I am not talking about you.

Mr. O'CONNOR [continuing]. I failed. I never got to Ickes.

Mr. LANTOS. All right. I think my time is up. Thank you, Mr. O'Connor.

Mr. WAXMAN. Thank you, Mr. Lantos. I want to yield to Mr. Kanjorski for 5 minutes.

Mr. KANJORSKI. Thank you, Mr. Chairman.

Mr. O'Connor, of course you are an unusual lobbyist to admit that you never even got the ball over the goal post, so you couldn't make the artificial claims that Mr. Lantos talked about. But to put this in perspective, here we have two contestant parties interested in something that could be financially very rewarding to either one, depending on the victory, and apparently brought the heaviest guns to bear to try and penetrate either the Department of Interior or even the White House, and to have whatever influence could be brought to bear, if there was any that could be brought to bear.

In the process of doing that, we have heard a lot of names that are very familiar to the American public: Harold Ickes, Secretary Babbitt, and the various other people involved. When the day is over, the record is closed, and we all go home, those names will never stop having penetrated the minds of some people, by virtue of the fact they were brought up or mentioned, there will forever be a stain. That is an unfortunate part of the history of Washington, it seems to me.

Let me just follow, in this course, your firm and you individually. Well, I should say you individually, as part of your firm. You are more associated on the Democratic side of things; is that correct?

Mr. O'CONNOR. That is correct.

Mr. KANJORSKI. But you do have a former Member of Congress who was elected as a Republican Member, Mr. Corcoran of Illinois, who really handled the Republican side of this thing; is that correct?

Mr. O'CONNOR. Yes, along with other Republicans in the firm.

Mr. KANJORSKI. He was really the signatory of this retainer contract or agreement you had, that your firm had. He was actually the one who signed on behalf of the firm as the "chief lobbyist;" is that correct?

Mr. O'CONNOR. I'm sorry, Congressman, I am a little hard of hearing. Could you say that again?

Mr. KANJORSKI. It was actually Mr. Corcoran that signed the retainer agreement on behalf of your firm?

Mr. O'CONNOR. That is correct.

Mr. KANJORSKI. So, he was the direct contract party and chief lobbyist for this exercise?

Mr. O'CONNOR. That is correct. He is a partner.

Mr. KANJORSKI. You have been kind enough to concede that you weren't very fortunate. Although you tried to contact people that you knew, to see if you could move the process or find out what was happening, you failed?

Mr. O'CONNOR. I failed as far as Mr. Ickes was concerned.

Mr. KANJORSKI. But the result that ultimately was made by people in the Department who were not the people you contacted. People in the professional range of the organization made the decision that benefited your client. And then the logic, as I understand it

for the last several days here, is sort of a post-hoax fallacy: Your clients contributed money, and our friends on the other side of the aisle would like us to assume that by virtue of that, after that fact, it alone is evidence that something improper was done or accomplished here, and it stemmed from the payment or donation of campaign moneys to the Democratic National Committee. Is that correct?

Mr. O'CONNOR. In 1992, and of course in the subsequent campaign, Indian clients of ours donated money to the—both to the DNC and to the Committee to Re-elect, and also to Members of Congress.

Mr. KANJORSKI. I see. Now, the interesting thing here, I looked at our panel we are going to have before us, and there is another very accomplished lobbyist in town, Mr. Eckstein. I have seen his name, but I don't see him on the panel. And he apparently did actually get the occasion to talk three times to the Secretary of the Interior, but for some reason his direct testimony is not necessary to the American people. It is a testimony of people who never made the score, didn't get the contact. But the person who got the contact, that we would like to ask exactly what did you say and exactly what did Secretary Babbitt say, they will never appear before this committee or never be on the record in an open session. Is that correct?

Mr. O'CONNOR. That is correct.

Mr. KANJORSKI. You know, we also have an outstanding former Governor and cabinet officer, and I think certainly an outstanding member of the bar that could eventually stand for the Supreme Court if nominated, Mr. Babbitt. Now, he has taken a lot of heat on this thing.

Mr. O'CONNOR. He certainly has, and he is a very able person.

Mr. KANJORSKI. And it seems to me that from just reading the record, and looking forward to his testimony tomorrow, a law school classmate exercised his ability to meet face-to-face with a cabinet officer who was not directly involved in the decision, did not take any action in the decision and it was made by professionals much lower in his agency. He has to now have his name questioned, and his integrity and his honor questioned, and it stems from another lobbyist who was retained by the other side in this case that the majority party doesn't see fit to put him before us so we can ask questions on what happened and get the best recall. I guess we are just going to have to rely on the public press and the insults cast about in the public press to Secretary Babbitt and Mr. Ickes and the administration and whoever you will. That is an unfortunate result.

Mr. O'CONNOR. I agree.

Mr. WAXMAN. Mr. Kanjorski, we have only 5 minutes left, and I wanted to yield some of the time to Mrs. Maloney.

Mr. KANJORSKI. Very good. I will yield back to you, Mr. Chairman, so you can yield to Mrs. Maloney.

Mrs. MALONEY. Thank you, Mr. Chairman.

Mr. O'Connor, when you contacted officials or attempted to contact officials in Government or in campaigns on behalf of your client, you had a very strong story to tell in terms of the degree of community opposition; is that correct?

Mr. O'CONNOR. Ma'am, again, I got to apologize. I am somewhat hard of hearing and I am not using a hearing aid, although my wife claims that I should. Could you just say that again?

Mrs. MALONEY. I am going to speak up. When you contacted officials in Government, or attempted to contact officials in Government or in campaigns on behalf of your client, you had a very strong case to make in terms of the degree of community opposition. Is it not correct that the entire Minnesota delegation was opposed to the casino developers from Florida's plans, as well as the Wisconsin—as well as the Republican Congressman from the area, as well as the local people? Is that a correct statement?

Mr. O'CONNOR. That is a correct statement.

Mrs. MALONEY. I would like to ask you if you agree with the testimony of Mr. Skibine, if you believe that this decision was made entirely on the merits?

Mr. O'CONNOR. I do believe that that is what happened.

Mrs. MALONEY. Do you believe that campaign contributions or political influence determined the outcome of this matter in any way?

Mr. O'CONNOR. Absolutely none.

Mrs. MALONEY. In this case, we had two sides, both sides had lawyers, both sides had well-paid lobbyists, both sides made contributions. And I would like to ask you, it has been widely reported that both sides made contributions, one said to the Democratic committee, other members made contributionss to the Republican committee, and the majority of these contributions on both sides was soft money, correct, was soft money?

Mr. O'CONNOR. I can only speak on our side, and that was the side that opposed the application. Both soft money and hard money was involved, because I believe some of our clients contributed to the Committee to Re-elect in the amount of $1,000.

Mrs. MALONEY. Last night the President, in his State of the Union address, called upon Congress to ban soft money so that large contributions could not be given to parties for party building. In your opinion, do you think that if we banned soft money as the President called for, that it would help eliminate concerns about purchasing influence over policy?

Mr. O'CONNOR. I certainly do.

Mrs. MALONEY. You support the President?

Mr. O'CONNOR. I support the President on his position on soft money.

Mrs. MALONEY. And in this case, in many cases in which two teams are out there, two sets of lobbyists, there are winners and losers, and when the winner later makes contributions, there will inevitably be an appearance of impropriety. And I would like to ask you, do you think that banning soft money might remove the appearance that decisions can be purchased?

Mr. O'CONNOR. I believe that, because soft money is usually in large amounts, and it raises the question why would he or she gives a large amount of money if there wasn't some economic reason for it.

Mrs. MALONEY. I would like to followup on the questioning of my colleague, Mr. Lantos, and he used the term "trivial pursuit." I would like to use the term "common sense."

Let me tell you, if the New York delegation, of which I am a member, was united in opposition to a casino in their State and Interior overruled us, let me tell you, we would have taken the issue to the floor. You would have never heard the end of it.

And what I don't understand, I feel like what is the fuss? If Interior had decided against what—in this memo that Mr. Bennett cited, 312, from Jennifer O'Connor to Harold Ickes, she begins, one paragraph, she says the local community is almost uniformly opposed to the proposed casino. And again, Mr. Chairman, I truly believe if Interior had decided in any way except the way they did, we would have heard such an outcry from every Republican in this Congress for overruling community input, the position not only of the congressional delegation, the State Senators, the city council members, the assembly people that represented the area.

People are elected to represent the point of view, oftentimes, of their constituents. If every constituent is telling you "We don't want a casino," what do you expect them to do? If Interior had overruled the delegation, I can't speak for the Wisconsin and Minnesota delegation, but I truly believe we would have seen a bill in Congress to reverse the position of Interior, and I for one would have supported them in the opposition that supported the community's point of view against the casino developer from Florida.

My time is up. I have quite a few more questions for you, Mr. O'Connor.

Mr. BURTON. The gentlelady's time has expired.

Mr. Hastert, you are recognized for 5 minutes.

Mr. HASTERT. I thank the chairman. I would just remind the gentlewoman, I guess she wasn't here last week when Mr. Skibine testified that he was the person from Indian Affairs and Gaming who had to make that decision. That was the first time in the history of making a decision about whether tribes had gaming privileges or not, or the license to do that, that took into effect what public opinion was. And the fact it wasn't in Minnesota, it happened to be in Wisconsin, a different State than the objectors.

Mrs. MALONEY. Point of information, since my name was mentioned——

Mr. BURTON. The gentleman has the time. He doesn't want to yield.

Mr. HASTERT. Mr. O'Connor, a couple things I want to talk about. Mr. Corcoran, Tom Corcoran, was deposed. Tom Corcoran happened to be one of my predecessors in the Congress, a good friend of mine and a fine gentleman.

But in his discussion there was talk about the frustration he talked about in his deposition, the frustration of not being able to get in contact with Mr. Ickes, and in fact the discussion with Ickes never took place, but the communication did. In fact, he testifies that he signed a letter that you sent to him, and with your permission he signed your name to the letter. And that letter then by messenger went to the White House, and it was also faxed to Mr. Ickes at the White House, and basically, I will read what happens here.

It says: "I have been informed by Pat O'Connor that because he was unable to reach Mr. Ickes by telephone, that he was going to send a letter to Mr. Ickes. He subsequently sent over a draft of that

letter and he asked me to assist in reviewing it to make sure that the facts were correct, and he also asked me to facilitate its delivery to Mr. Ickes because Mr. O'Connor at that time was in Minneapolis, so I assisted him in both respects."

It goes on to say that—a question about what was in the letter, and it says—the question is, to Mr. Corcoran, if I make reference to what would be page 2, and it is really number 4, I want to address right now what number 4 says. And it says: "All of the representatives of the tribes that met with Chairman Fowler are Democrats, and have been so for years, and I can testify to their previous financial support to the DNC and to the 1992 Clinton/Gore Campaign Committee."

Now that was a reference just to refresh people's memory, right?

Mr. O'CONNOR. It was in my letter that—pardon me. It was in my letter dated May 8 that went to Harold Ickes.

Mr. HASTERT. Right. Then he goes on to say, "Pat O'Connor told me that with respect to Item 4 that he wanted to get the further attention of the chairman of the Democratic party, and that the opponents, not only our client but other tribes were, in Pat's words, good Democrats."

Mr. O'CONNOR. Can you say that again?

Mr. HASTERT. I will be happy to. It says, "Pat O'Connor"—this is Mr. Corcoran testifying—"told me with respect to Item 4 that he wanted to get further attention of the chairman of the Democratic party, and that the opponents, not only our client but other tribes were, in Pat's words, good Democrats."

Mr. O'CONNOR. I'm getting confused about—we were the opponents.

Mr. HASTERT. About the Minnesota Indians who didn't want the dog track and casino in Wisconsin, that your clients, in essence, were good Democrats?

Mr. O'CONNOR. Yes, our clients were the Democrats.

Mr. HASTERT. OK, fine. So sometimes there is a fine line with—Mr. Lantos said it, I guess, very well—between what decisions makes and politics. I mean, it is there, it is part of the essence of this business.

Corcoran concluded by saying, "The only other contact that I know of with respect to anybody from O'Connor & Hannan with the President was a casual contact, not really a lobbying contact, that Tom Snyder told me about." Tom Snyder is a member of your law firm, is that right?

Mr. O'CONNOR. That is correct, was at that time.

Mr. HASTERT. "As I recall, a day or so after it happened, Mr. Snyder, a good friend of the President, he was attending a reception and they were chatting, and in the course of that chat the President indicated that Pat O'Connor had mentioned this dog track to him. They both had a pretty good laugh about it, but the President of the United States had been informed about a dog track in Wisconsin, and I must say Tom and I had a pretty good laugh about it as well."

So you did get this communication to higher levels, is that correct?

Mr. O'CONNOR. I did get the communication to the President of the United States.

Mr. HASTERT. And you did write the letter to Harold Ickes?
Mr. O'CONNOR. I did write a letter to Harold Ickes.
Mr. HASTERT. So there was communication?
Mr. O'CONNOR. That's correct.
Mr. HASTERT. I just wanted to set that straight.

Finally, there is an exhibit, 357–23, and it is on your calendar, and you note that you have a notation concerning the Hudson Dog Track, that there is a reference to Loretta Avent. And we talked about her, and she is the person who said, "No, absolutely, there is an impropriety here and I am not going to talk to you about it," right?

Mr. O'CONNOR. She never said it was an impropriety to me, but she said she didn't want to talk about it.

Mr. HASTERT. So she did the right thing. Basically, from her perspective, she did the right thing.

Mr. O'CONNOR. I don't wish to speak about her perspective, but I don't think there was anything improper about me asking her.

Mr. HASTERT. Absolutely. OK. So, Mr. O'Connor, you will note that there is an entry there underneath the Hudson Dog Track, and it says, "Indians, 50, DNC." I am not sure if that is 50 Indians or 50 tribes, it could have been $50, but you probably wouldn't have put a thing down for $50. Could that have been $50,000? You talked about Larry Kitto in reference to the Committee to Re-elect.

Mr. O'CONNOR. Congressman, I believe that that reference, and this was on the part—on the left-hand side of my day timer where I put down things to remind me to do things. The Indians, 50 DNC, Larry Kitto, Committee to Re-elect, I don't recollect when I put that down and why I put it down, but I do know that it refers to No. 3, which is the Committee to Re-elect. And my feeling about it would be that that 50 probably relates to what Terry McAuliffe asked me and Larry Kitto to do, and that is get 50 different Indians, whether clients of ours or not, to contribute $1,000 apiece of hard money.

Mr. HASTERT. In conclusion, one final thing. I would like to enter exhibit C–113, which says DNC Services Corp., DNC, and Democratic Senatorial Campaign Committee, and it adds up to $50,000. So maybe that is a coincidence, I don't know.

I yield back the remainder of my time.

Mr. BURTON. Without objection, it is entered.

[Exhibit C–113 follows:]

ST. CROIX CHIPPEWA

DNC Services Corporation (6/21/96)	**$15,000**
DNC (11/9/95)	**$15,000**
Democratic Senatorial Campaign Committee (11/4/96)	**$20,000**
Total:	**$50,000**

Mrs. MALONEY. May I state a point of order?

Mr. BURTON. The gentlelady will state her point.

Mrs. MALONEY. One of personal privilege. Since my name was mentioned by Mr. Hastert——

Mr. HASTERT. Point of order, Mr. Chairman. I did not mention the lady's name. I said a colleague from New York.

Mr. BURTON. Mr. Hastert had the time. You are recognized for the next 5 minutes.

Mrs. MALONEY. I did mention that both Wisconsin and—the Wisconsin delegation that went on record, Republican Roth, Republican Gunderson, were opposed to the project, as well as——

Mr. HASTERT. Regular order, Mr. Chairman.

Mr. BURTON. You are not in order right now.

Mr. Barrett, you are recognized for 5 minutes.

Mr. BARRETT. Thank you, Mr. Chairman.

Mr. O'Connor, over here, to your left, way over here, way over here.

Mr. O'CONNOR. Yes, the Congressman from Wisconsin.

Mr. BARRETT. Nice to see you, sir. Thank you for being here today. I'm not a very good dancer so I am not going to dance around the issue. Your client gave a lot of money to the Democratic National Committee.

Mr. O'CONNOR. Yes.

Mr. BARRETT. Did you ever offer to anyone at the White House that your client was willing to give campaign contributions in exchange for the Department of Interior making a decision in your favor?

Mr. O'CONNOR. Absolutely none.

Mr. BARRETT. Did you ever offer to anyone at the DNC that your client was willing to give campaign contributions in exchange for the Department of Interior making a decision in your favor?

Mr. O'CONNOR. I never said that to anyone at the DNC or anywhere else.

Mr. BARRETT. Did you ever offer to anyone on the Clinton/Gore campaign that your client was willing to give campaign contributions in exchange for the Department of Interior making a decision in your favor?

Mr. O'CONNOR. I never made such a request.

Mr. BARRETT. Now let me ask it the other way. Did anyone at the White House ever tell you that a contribution from your client would help them get the Hudson application denied?

Mr. O'CONNOR. No one in the White House said that to me.

Mr. BARRETT. Did anyone at the DNC ever tell you that a contribution from the opponents—from the opponent tribes would help them get the Hudson application denied?

Mr. O'CONNOR. No one at the DNC ever said that to me.

Mr. BARRETT. Did anyone at the Clinton/Gore campaign ever tell you a contribution from the opponent tribes would help them get the Hudson application denied?

Mr. O'CONNOR. No one at the Clinton/Gore Committee to Re-elect ever said anything like that to me.

Mr. BARRETT. Do you know of anyone who either made or received any offers of that kind?

Mr. O'CONNOR. I know of no one that ever made such a statement or offer.

Mr. BARRETT. And you are under oath today.

Mr. O'CONNOR. What?

Mr. BARRETT. You are under oath today.

Mr. O'CONNOR. I am aware I am under oath.

Mr. BARRETT. Thank you. I would like to go to exhibit 312, which is something we have talked about a little bit earlier today. I think Mr. Bennett made reference to it. It is a memorandum to Harold Ickes from Jennifer O'Connor. Do you know what Jennifer O'Connor's title is, or her role was? I don't.

[Note.—Exhibit 312 may be found on p. 486.]

Mr. O'CONNOR. I don't.

Mr. BARRETT. Mr. Bennett, maybe you can help us with that.

Mr. BENNETT. For the record, Congressman, I know she is on Mr. Ickes' staff. I don't know what her title is.

Mr. BARRETT. And this was May 18, 1995. The smoking gun in all this is that there was some sort of improper influence, it was asserted, and it drove this decision. But if you look at this memorandum, what are the reasons that this memorandum of why this off-reservation proposal was going to be denied, if you can take a look at that.

Mr. O'CONNOR. Well, this memorandum for Harold Ickes from Jennifer O'Connor points out that the local community is almost uniformly opposed to the proposed casino. And it goes into the fact that the Minnesota delegation is also uniformly opposed to the proposal. And it goes on to say the Minnesota tribes located near the State border feel they would be adversely impacted by the competition.

Mr. BARRETT. Are those, to your knowledge, the correct assertions?

Mr. O'CONNOR. To my knowledge, I believe that these were factors that were brought to the attention of the Interior, and to what extent they weighed into the Interior's decision, I am not privy to.

Mr. BARRETT. OK. You are aware of the fact that the actual denial letter did lead off with the local opposition?

Mr. O'CONNOR. I am well aware of it.

Mr. BARRETT. You are aware the letter also refers to opposition from other tribes, although I don't know it mentioned Minnesota tribes.

Mr. O'CONNOR. What?

Mr. BARRETT. You are aware the letter of denial also mentioned opposition from other tribes.

Mr. O'CONNOR. Yes, I am aware of that.

Mr. BARRETT. When you talked to President Clinton in that line in Minneapolis, were you frustrated with the woman who—why did you complain to the President of the United States?

Mr. O'CONNOR. I wouldn't characterize it as frustrated. I just told the President that I wasn't getting calls returned from Loretta Avent at the White House.

Mr. BARRETT. And she did ultimately return your call?

Mr. O'CONNOR. What?

Mr. BARRETT. She did ultimately return your calls?

Mr. O'CONNOR. That particular day.

Mr. BARRETT. That particular day?

Mr. O'CONNOR. She called me.

Mr. BARRETT. Let me just say there have been occasions when I as a Congressman am out in the community and people will say, "I have contacted your office. I haven't gotten response." And what I will immediately do is turn to the staff person next to me and say, "What is the problem? Let's get back to that person."

I am pleased the President's staff got back that quickly. In any event, the reason she gave you for not getting back to you was what, again?

Mr. O'CONNOR. The reason is, she said, "I deal with 400 different Indian tribes, and I only talk to the chairman of the tribes or the chiefs of the tribes."

Mr. BARRETT. And in fact, her memorandum, which is also in this record, says that this issue is such a hot issue the White House wants to stay away from it; isn't that correct?

Mr. O'CONNOR. She never made that comment to me.

Mr. BARRETT. But in hindsight, now we are aware of it?

Mr. O'CONNOR. Oh, yes, we are aware of it.

Mr. BARRETT. You never got to see Bruce Babbitt on this issue?

Mr. O'CONNOR. No, I did not.

Mr. BARRETT. Did your counterpart, Mr. Eckstein, ever get to see Bruce Babbitt on the issue?

Mr. O'CONNOR. I have read quite a lot about that, and of course I observed Secretary Babbitt's testimony over on the Senate side, and I believe he is not only a former classmate of the Secretary, but I believe he might have been also a partner of Secretary Babbitt when he was in the private practice.

Mr. BARRETT. Finally, again just for the record, the person from your law firm who is on the retainer letter—and I don't know if this has been introduced into the record, if it is not, I ask unanimous consent to have it introduced into the record—is Mr. Corcoran, who is in fact a former Republican Congressman from Illinois. You are not mentioned in this letter, is that correct?

[The letter referred to follows:]

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400
FAX (202) 466-2198

February 3, 1995

Privileged and Confidential

Hon. Lewis Taylor
Chairman, St. Croix Tribe
P.O. Box 287
Hertel, Wisconsin 54845

Dear Lewis:

This letter is intended to state the terms of the agreement between O'Connor & Hannan and the St. Croix Tribe regarding our representation of the Tribe in connection with the proposed conversion of the Hudson dog track to an Indian gaming facility.

Under your direction and supervision, we will represent your Tribe in connection with such efforts as may be necessary. We will provide legal and regulatory representation, consultation and advice, including but not limited to: recommendations as to actions that we believe the Tribe should undertake, appearances at meetings on your behalf, representation of the Tribe on this matter before pertinent government agencies, representation of the Tribe with government officials on this issue, and giving you reports as requested.

You will have the right to call upon the services of any member of our firm regarding this matter. However, Larry Kitto and I will assume overall responsibility for you. We will draw upon the assistance, as needed, of others in the firm who can best serve your needs.

We will undertake this matter at the usual hourly rates of our members which range from $75 to $250 per hour but in the aggregate will not exceed $7,500.00 per month. Larry and I will continue to look for another tribe to share in the cost of this endeavor, and when we do so will adjust this monthly maximum accordingly. The firm will expect reimbursement for out-of-pocket expenses but will incur no substantial expenses without your prior approval. We will send monthly statements for the fees and expenses to be payable on receipt.

This agreement can be terminated by either party at any time by written notice.

I am sending you two identical original versions of this letter. Assuming you agree to the terms of this letter, please sign both copies in the space indicated below and return one copy to me. You should keep the other copy for your files.

We look forward to working with you.

Sincerely,

Thomas J. Corcoran

/jj

Dated: 2/7/95

Hon. Lewis Taylor
Chairman, St. Croix Tribe

Mr. O'CONNOR. Mr. Corcoran, it is true, he is a former Republican Congressman.

Mr. BARRETT. I don't blame him, we all have problems, I don't blame him for that.

Mr. O'CONNOR. Mr. Corcoran was the partner in charge, and responsible in supervising this particular client.

Mr. BARRETT. You are not mentioned in this letter, are you? I mean, I did not see your name in the retainer letter.

Mr. O'CONNOR. I doubt if I would be mentioned in it. I don't think I ever saw the letter.

Mr. BARRETT. Thank you. I don't think I have any further time.

Mr. BURTON. The gentleman's time has expired.

The gentleman from California, Mr. Cox.

Mr. COX. I thank the chairman.

Mr. O'Connor—and for the benefit of your counsel, the exhibits to which I will be referring are 304, 305–1, and 311–A–3 and 4—Mr. O'Connor, are you aware that the White House Counsel's Office advises that the White House should be kept away from lobbyists on Indian matters?

Mr. O'CONNOR. On what?

Mr. COX. On Indian matters.

Mr. O'CONNOR. Am I aware of it?

Mr. COX. Yes.

Mr. O'CONNOR. No, I'm not aware of it.

Mr. COX. We have in exhibit 304 a memo from the Executive Office of the President that states: "As you know, last year, White House Counsel advised Loretta," referring to the very Loretta Avent that we have been discussing here, "that she should not meet with lobbyists or lawyers on Indian issues."

On April 24, 1995, in a memo to Harold Ickes, whom you had gotten involved in this, and he was obviously very, very senior at the White House, from Loretta Avent, she advises Harold Ickes, quote, "The legal implications of our involvement in the White House would be disastrous."

You then wrote a letter after that, again to Ickes, having already gotten involved, in which you laid out political reasons—not legal reasons but political reasons—for rejecting the application that was then before Interior. You said in your letter of May 8, 1995, quote, "I am concerned that those at Interior"—not those at the White House, but those at Interior were involved—"are leaning toward creating trust lands."

And your clients of course were paying you to stop that, and you wanted, in your letter you say, quote, "to relate the politics involved in the situation." No. 1, Governor Thompson of Wisconsin, a Republican, I note, supports this project, the opposite view of your clients. No. 2, Senator Al D'Amato, a Republican, I interpolate, supports this project. No. 3, the chairman of the Indian tribe in the forefront of this project, which you opposed, is active in Republican party politics.

Now I would like to ask the staff to put up a video quickly, with the sound.

[Video played.]

Mr. COX. I would like to ask you the question why, given that the White House Counsel's Office had advised that lobbyists ought

not to be involved—and I should add I worked in the White House Counsel's Office, and the policy was not to get the White House and the President and the high people involved there to interfere with agency decisions—why did you have, as your basic approach to this, to involve the White House, to involve Harold Ickes? And why did you write Harold Ickes a letter that laid out purely political reasons that had nothing to do with the legal basis that Interior could legitimately use to make this decision? Why did you do that?

Mr. O'CONNOR. First of all, Congressman, this letter not only laid out politics involved but it did, in the first page and part of the second, talk about the reasons for the substantive opposal. Which do you want to talk about?

Mr. COX. I want to ask you why you raised those political issues and why you wanted to involve the White House, when you knew they were—ought not to be involved in the decision?

Mr. O'CONNOR. I raised these five points in the letter to get Harold Ickes' attention to our problem. I decided that Harold Ickes gets a lot of mail, and I wanted to bring out the politics involved in the situation. Also, as you are well aware, when I addressed this letter I addressed it to Ickes as Deputy Chief of Staff for Policy and Political Affairs.

Now, why did I write the letter? I was hopeful that I would get Ickes to at least read it, to see the concerns of our client, and I was hopeful that he might make a call over there and say I have been talking or I have got some correspondence here from people who are opposing this application, and they are concerned that the committee is not focusing on why we are opposing this application.

Mr. COX. Mr. Chairman, my time has expired. I just want to reiterate, as I said at the earlier hearing, that I am not sure the decision that was reached here was not good for the community of Hudson, WI, but that is not what this hearing is about and I am very troubled by what I am hearing.

Mr. BURTON. Thank you, Mr. Cox.

Mr. Kucinich.

Mr. KUCINICH. Thank you very much, Mr. Chairman.

Mr. O'Connor, according to your date book—hi.

Mr. O'CONNOR. Hi, Congressman.

Mr. KUCINICH. How are you this afternoon?

Mr. O'CONNOR. I'm very fine. And you?

Mr. KUCINICH. Very good, and I appreciate it. I have a few questions for you and I appreciate your cooperation in answering them.

Mr. O'CONNOR. Certainly.

Mr. KUCINICH. Mr. O'Connor, according to your date book, it appears you tried a number of times to contact Loretta Avent, an Indian specialist at the White House, in April 1995. Do you recall those attempts to reach Ms. Avent?

Mr. O'CONNOR. I do.

Mr. KUCINICH. And Ms. Avent did not call you back, did she?

Mr. O'CONNOR. No.

Mr. KUCINICH. So on April 24 you mentioned the issue to the President, and he referred you to Bruce Lindsey, as he moved out. Now Lindsey told you he would have someone call you, and Ms. Avent did. What did she tell you when she called you?

Mr. O'CONNOR. She called me and she said to me—pardon me so I can get closer to the microphone. She called me and in response, she said, to my calls to her. And then she started right out by saying, "My job is to work with some 400 Indian tribes, and I only talk to the chiefs or the chairman of the tribes." She didn't say—she just stated that as a matter of fact. She didn't say it in any irritating tone, but she made clear to me that she didn't want to—and she added, "I don't talk to lobbyists."

Mr. KUCINICH. And Harold Ickes left a message for you and you left messages for each other?

Mr. O'CONNOR. Yes.

Mr. KUCINICH. But you never spoke to each other; is that correct?

Mr. O'CONNOR. That is correct.

Mr. KUCINICH. You then tried to contact Mr. Ickes by going through Don Fowler, but you do not know if Mr. Fowler ever contacted Ickes for you; is that correct?

Mr. O'CONNOR. I went to him, yes, and asked him, and I attended a meeting with him, along with some of our clients and other tribal leaders.

Mr. KUCINICH. Yes, sir. But do you know if Mr. Fowler ever contacted Mr. Ickes for you?

Mr. O'CONNOR. I don't recall a conversation with Fowler after that meeting on the 28th. But I know that Mr. Fowler did talk to me after that 28th meeting, I know that, and I can't recall right now what he told me.

Mr. KUCINICH. Thank you, on that point.

You sent a letter on May 8, I think it was, 1995, to Mr. Ickes, but you don't know if he read the letter. You don't know if he acted on it; is that correct?

Mr. O'CONNOR. That's correct. I don't even know if he got it.

Mr. KUCINICH. You never actually spoke to Mr. Ickes, you never had any substantive discussion about the Hudson Casino with anyone in the White House. And you do not know whether anyone in the White House did anything with regard to the casino; is that correct?

Mr. O'CONNOR. That is correct. The only thing I know is I did get a telephone call from then partner of our firm, Mr. Schneider, whom I had asked if he was over there at any time, and he ran into Ickes, if he thought it appropriate to make an inquiry. And then he called me back, and my recollection is what he said was, Ickes said he'd look into it. Now, that's the only thing I know from Schneider.

Mr. KUCINICH. I am going to ask you a question that might be a particularly sensitive question to ask a lobbyist, but here it goes. So you don't really know of any reason why—all of your efforts, you don't know that if any of your efforts, for that matter, on behalf of your client, are connected to the outcome of the case?

Mr. O'CONNOR. No, I don't. I don't know whether or not my efforts were ever—well, I know this. Ickes never called me back, and I sure tried to get ahold of him.

Mr. KUCINICH. So you don't have any reason to think that the White House had anything to do with the outcome of the case?

Mr. O'CONNOR. No, I don't. The only person I talked to who knew what I was talking about was Loretta Avent.

Mr. KUCINICH. As far as the DNC, you don't have any reason to believe that they had anything to do with the outcome of the case?

Mr. O'CONNOR. No.

Mr. WAXMAN. Mr. Kucinich, would you yield to me?

Mr. KUCINICH. I would certainly yield to Mr. Waxman.

Mr. WAXMAN. It is almost comical that we had to see an ABC film. It has come to this. This is what the Republicans are relying on, an ABC news report that 3 days of hearings on this subject have completely rebutted, as well as Mr. O'Connor's testimony today. They tried to argue that there was some connection between campaign contributions and big lobbyists like Mr. O'Connor and the result. They just have not established it because apparently it is just not true. So after all is said and done, they want to rely on an ABC news show that has been discredited because we have got more information than they had when they did their show. Thank you.

Mr. O'CONNOR. Mr. Congressman, I would like to say that they were hounding me, and if I had been 5 years younger, I think I could have outraced them.

Mr. KUCINICH. I sometimes feel that way myself.

Now, Mr. O'Connor, you had a letter to Harold Ickes that said that Governor Thompson of Wisconsin supports this project.

Mr. O'CONNOR. Yes.

Mr. KUCINICH. We know, in fact, though that Governor Thompson opposed the casino; isn't that right?

Mr. O'CONNOR. Say that again?

Mr. KUCINICH. Isn't it a fact, though, that Governor Thompson opposed the casino?

Mr. O'CONNOR. It was my belief at the time that the Governor was wavering, that the Governor was—maybe he would support the casino. Of course, I have heard in testimony last week a view of one of the witnesses that said he thought the Governor had an open mind about it and that he felt that he might very well support it and he felt that it didn't necessarily mean an expansion of gambling.

At the time I wrote this, I was satisfied with the information that was before me that he was supporting the casino. I wouldn't have put it in there if I wasn't satisfied with what had been told me.

Mr. KUCINICH. Thank you very much, Mr. O'Connor. Mr. Chairman.

Mr. BURTON. I think I'll take my 5 minutes at this point.

On April 24, Ms. Avent said no talking to lobbyists. That's shown in 305. You don't need to put it on the screen. But she was very clear that she thought that this was a serioius legal problem if the White House got involved. And then you look at——

Mr. O'CONNOR. Not with me.

Mr. BURTON. I know. I'm making some statements here.

Mr. O'CONNOR. Pardon me. Excuse me.

Mr. BURTON. In looking at exhibit 356–39, your billing records, Mr. O'Connor, of May 23 and 24 reflect your discussion of this matter with Terry McAuliffe, who is the head of the Clinton/Gore Reelect Committee. There is a reference to you asking him to agree to call Harold Ickes and arrange an appointment for the Indians.

Your time entry for June 6, 1995, exhibit 36–41, talks about McAuliffe making contact with Ickes. So it refers to this contact actually being made.

The people at the White House had been red flagged, I believe, by Ms. Avent that this was a hot potato and they should not get involved. Nevertheless, it appears as though that they did get involved. Mr. Kitto said when he was questioned and we have his deposition, which you may not have in front of you, but I will read from it: "Weren't you advocating that the White House get involved to get the BIA," Bureau of Indian Affairs, "to turn it down?"

He says, "Well, of course, when they—if they look at the information in our opinion, there was no other decision to make, but to turn it down."

"But you did, in fact, solicit the White House intervention for the express purpose of getting the result you got."

He says, "Absolutely."

"And you wanted the White House to intervene and to put pressure, whatever pressure was necessary on the BIA so that you could succeed in getting the thing turned down?"

We wanted the Federal Government to do its job and it, and hopefully the White House helped in that process.

Do you believe that the White House pressure was part of the process in approval or denial of fee-to-trust applications at the BIA?

Well, I would hope that somebody in the White House called the Department of Interior and said, take a good look at this. Which they shouldn't do because Ms. Avent says this is a hot potato; it's legally something we aren't allowed to get involved in. Then we go on.

You think if somebody at the White House phoned and said, take a good look at this, somebody at the BIA would get the point of what side the White House was on.

Well, I hope people know who they work for, he said. I'm assuming that they take their—Babbitt takes his orders from somebody in the White House.

So your partner, Mr. Kitto, felt like this kind of pressure being put on the White House would end up getting the White House to put pressure on the Bureau of Indian Affairs and the decision being made that would stop the casino.

I want to point out something that is of great interest to me and I pointed it out last week. Prior to this decision being made, there was by the tribes in question $500 in contributions that had been made to the DNC or related Democratic fund-raising efforts. After this decision was made, on July 14, 1995, they contributed $356,250. Why do you think they did that?

Mr. O'CONNOR. First of all, from what you said, Mr. Chairman, there was $500 before——

Mr. BURTON. July 14.

Mr. O'CONNOR. I'm not aware—I haven't any information as to when these were—and I don't dispute what you say. But these Indians in 1992 made substantial contributions to the Clinton/Gore campaign. Now, why would they make substantial contributions afterwards, after that date that you——

Mr. BURTON. After that decision.

Mr. O'CONNOR. After the application was turned down?

Mr. BURTON. Right.

Mr. O'CONNOR. Your question to me is why would they make it?

Mr. BURTON. Yes.

Mr. O'CONNOR. First of all, these Indians have been strong supporters of the Democratic party since the casinos went into operation. They have been very active in making contributions.

Mr. BURTON. I think you have made your point. I understand what you are saying, Mr. O'Connor. I just have a limited amount of time.

Mr. O'CONNOR. I'm sorry.

Mr. BURTON. I think you have made the point.

But in your memo book and Mr. Kitto's memo book, you both refer in about a 3-week period to $50,000 being contributed to the DNC. This is in your billing records as related to the tribes in question.

Mr. O'CONNOR. First, my records and that 50 was not in the billing records. Second——

Mr. BURTON. It was in your calendar.

Mr. O'CONNOR. It's in my calendar on the left-hand side. It was in my calendar. My recollection, that $50,000, and if you look, it deals with not the DNC, but with the Committee to Re-elect. In my recollection, Mr. Terry McAuliffe had asked us if we could get 50 individual contributions.

Mr. BURTON. I understand. And Mr. McAuliffe is one of the people that you asked to intercede to try to get an appointment with Mr. Ickes to talk about this issue. And Mr. McAuliffe did, $50,000 was raised by the tribes in question, and Mr. Kitto, in his memo book, also refers to the $50,000. So there was $50,000 referred to in your memo book, and in his memo book. Mr. McAuliffe asked for the $50,000. Mr. McAuliffe made the connection with Mr. Ickes at the White House, and the $50,000 was given. And ultimately the application was rejected. You don't see any connection between those?

Mr. O'CONNOR. No. And furthermore, I can't talk about what's in Mr. Kitto's book or what Mr. Kitto said in his deposition.

Mr. BURTON. He's your law partner, is he not?

Mr. O'CONNOR. I don't dispute that at all. I do know my situation. In my situation that 50, in my judgment, referred to Terry asking us whether we could raise $50,000 from the Indians individually, and I don't recall that we did that. My best recollection—I don't know what Kitto raised, but my best recollection, I raised about $14,000 and it was from not only Indians, but from others.

Mr. BURTON. One final question. During the conversation when Mr. McAuliffe asked for the $50,000, did you discuss at that time the problem that you were having with the application of the Indian tribes?

Mr. O'CONNOR. I'm not sure whether it was there or in a subsequent conversation. I was working on that committee, and I saw McAuliffe on more than one occasion. One of them was with Kitto. Whether or not I asked him at that time, will you as a personal favor talk to Ickes or whether it was in a later discussion which was only maybe a day or so later, but I did ask him.

Mr. BURTON. Well, the point is, during the conversation, the $50,000 was discussed. It is very possible that you also discussed the Indian tribe issue.

Mr. O'CONNOR. I don't think so. But it's possible.

Mr. BURTON. Let me just say that we have a vote on and nobody has had any lunch. What I would like to do is have everybody go vote and come back and we will conclude with this panel.

Mr. WAXMAN. Mr. Chairman, if I might, we have no evidence, maybe the chairman can help us on this, that Mr. McAuliffe did anything, whether he called Mr. Ickes. Mr. O'Connor can't testify. You made the statement, but I'd like to know what evidence you have to back up that statement.

Mr. TIERNEY. Mr. Chairman, I would like to ask if the Chair would indulge just recognizing me for the moment so that I could give my time to Mr. Barrett when we come back because I will not be able to come back, so I ask for that courtesy.

Mr. BURTON. The Chair will accept that. We will stand in recess until as close to 2:15 as possible.

[Recess.]

Mr. BURTON. Gentleman, if you don't mind, we will go ahead and get started. Other Members, I'm sure, will be coming back very quickly, but in the interim we have Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman. I want to thank Mr. Tierney for yielding me his time. Mr. Tierney wanted me to point out that he has a bill pending for campaign finance reform and that this type of hearing could just as easily be a hearing on tobacco, and that both sides are going to continue to criticize the other's money and that is the real issue is campaign finance reform, and he wanted me to mention that.

Along those same lines, Mr. Chairman, I also have to weigh in that several times during the course of this hearing Mr. Waxman and others have talked about the anomaly that we are here to discuss this issue, but nowhere on this committee's agenda is there the issue of tobacco. I realize that initially the response of the committee, of the Chair was that this committee's purview was foreign money, that was at the time when we were looking at the allegations of Chinese money.

Next, we have been told that that is under the jurisdiction of the Commerce Committee, although that doesn't deal with the campaign finance reports. I actually think that the next, if I could offer one, the next excuse would be when the weather conditions are correct or when the weather conditions are right, because I think it is going to be a cold day in hell before this committee would ever look at allegations involving the Republican National Committee.

I would love to go through Haley Barbour's time slips and ask him some questions about his billing practices and contributions to the Republican National Committee. And I say that because I am critical of the money involved in politics. And I do not like the fact that there was a lot of money raised here. But that money pales in comparison to the amount of money that was raised by the Republican National Committee and anybody who looks at those figures knows that. So you can have a good hearing and this is a good hearing, and in a way it is an important hearing because it highlights to the American people what the scandal is.

The scandal is not that this money was given, because Mr. O'Connor testified that there was no quid pro quo here. I specifically asked him if he knew that he was under oath when he gave that answer and he said, yes. So I accept him at his word. The scandal is that this type of practice is legal in this country and the scandal is that this Congress refuses to do anything about it.

The sad reality is that I think what happens as a result in my home State and other parts of the country is that people just turn themselves off to the process. They say, we don't have the money to get involved, we're not going to get involved in the political process. And I think that there might be a grand design on behalf of the Republican leadership of this Congress to have fewer people involved in democracy, because it then allows more monied interests to have greater power in this country. And I think that that is something that has to be said.

I also want to talk a little bit about the comparisons at the Federal level and the State level, because I think that they are very interesting and we really haven't spent much time on that issue. On the State level, as we know, Governor Thompson had some pretty clear statements that he was opposed to expanding gambling. Yet, when we talked last week to Mr. Havenick and the members from the three tribes, they intimated that that really was not all that it appeared; that they understood that the Governor had to make these public statements against gambling, but they were getting messages or they were hearing that the Governor was open to their proposals.

So in essence, what they're saying is that there's some sort of secret understanding, and I don't think they use the word "secret," but secret understanding that the Governor would look at this with an open mind. So on the one hand, they are coming here, and the dog track interests in particular, is coming here and saying that they have not been given the right access that they want, that they feel they deserve; notwithstanding the fact that their lobbyist was the only one to meet personally with Mr. Babbitt, but at the State level, there is nothing wrong for them to have agreements that are reached without public input with the Governor of the State of Wisconsin. So I think as we—as we put this up, if we had a blackboard here and, of course, the minority doesn't have the resources that the majority does, so we can't do that, but if you look at State-Federal, the Federal allegation is unfair access by the Democrats.

On the State level, there is basically an acknowledgment that they had access to the Governor where the decision was made. The other allegation, of course, is the money here. And here the allegation is that hundreds of thousands of dollars were in play. But I have an article here, September 18, 1990, Eau Claire Leader-Telegram, which starts out, "Dog racing interests in the St. Croix Meadows Greyhound Park being built in Hudson have contributed $181,923 to Governor Tommy Thompson's gubernatorial campaign since 1985, a representative of Democratic Thomas Loftus' campaign said today." He was the challenger to Governor Thompson.

You have said that $250,000 is a lot of money on the Federal level. If $250,000 in 1996 is a lot of money on the Federal level, what is $181,000 in 1990 at the State level in terms of access and buying favorable results? The comments by Loftus, the article goes

on to say, the State assembly speaker from Sun Prairie, came a day after the Milwaukee Journal reported that dog racing interests in the State's five tracks had donated at least $286,000 to Thompson's campaign.

The article goes on even further to state, "At his news conference, Loftus questioned why a Florida family seeking a track license would hire attorney Michael Grebe, Chairman of the Republican party of Wisconsin, to represent it." I think the answer is clear, because he was the one that they perceived with the Republican Governor had the most access. So, yes, you can hurl all the accusations that you want toward us and we will hurl all the accusations that we want back toward you. But until we get at the root problem, this is going to go on. This is legal.

I am sure that if we brought in Mr. Barbour and I asked him under oath whether he ever accepted or made the representation that by giving millions of dollars to the Republican National Committee that the Republican National Committee—that the Congress would act in favor of his clients on tobacco, he would say, yes—he would say, no, there was no influence at all. But as long as you are going to permit, under your jurisdiction, this practice to continue, then I don't think we can ever be surprised. The real loser in this is the American people because they feel that they are not part of this system and I am afraid, Mr. Chairman, that they might be right.

I yield back the balance of my time.

Mr. BURTON. The gentleman's time has expired.

Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman.

Mr. O'Connor, I hope you can hear me OK. I will try to be as loud as possible so you can respond. You said you never talked to Harold Ickes; is that true?

Mr. O'CONNOR. That's true.

Mr. MICA. That's correct. Maybe you could pull that up a little so I can hear you. My wife says the same thing about me.

You said you did talk to Mr. Fowler at the DNC.

Mr. O'CONNOR. Yes.

Mr. MICA. What did you ask him to do, to kill the project if he could, or to contact someone else, or what?

Mr. O'CONNOR. I met with Mr. Fowler and——

Mr. MICA. Was that May 5?

Mr. O'CONNOR. No, I think it was on April 28.

Mr. MICA. April 28, that is right. Did you ask him to kill the project? Or to contact Harold Ickes? Or to contact someone in the Interior Department? What was the strategy?

Mr. O'CONNOR. At that meeting, Congressman, it was attended by me and several tribe leaders. In our discussions with Mr. Fowler at that time, we asked, and I used the word "we"—I was part of the group—we asked if Mr. Fowler would consider talking to Mr. Ickes at the White House to express our concern that we didn't believe that the people in Interior working on this particular application were focusing on our opposing the application and were not focusing on the question of the serious economic consequences that would be suffered by tribes.

Mr. MICA. But basically you wanted the project not to go forward, right?

Mr. O'CONNOR. That's right.

Mr. MICA. Then you met with Mr. McAuliffe. You talked to him you testified, and basically you told him the same thing. And you had still not talked to Mr. Ickes. And then you have a partner, is it Tom Schneider?

Mr. O'CONNOR. Yes, he was a partner at——

Mr. MICA. Did you suggest to Tom to go to this fund-raiser or did Tom tell you that he was going to a fund-raiser where he might see the President and maybe Mr. Ickes?

Mr. O'CONNOR. I think I understand your question. And it is did I talk to Mr. Schneider about possibly talking to Mr. Ickes and the President if he happened to be over at the White House, and the answer is, yes, I did talk to him and I did tell him if it was appropriate, would he bring it up to Mr. Ickes.

Mr. MICA. And then I think you testified a little bit earlier that Schneider came back and said that he talked to the President, or at least he talked to Ickes; is that right?

Mr. O'CONNOR. Yes.

Mr. MICA. He reported back to you.

Mr. O'CONNOR. Yes.

Mr. MICA. What did he say, that they were going to help?

Mr. O'CONNOR. He told me by phone that he had brought it up with Ickes and Ickes said that he would look into it.

Mr. MICA. So basically you hadn't been able to directly convey this to Ickes, but Fowler sort of sent a message, McAuliffe was going to send a message and Schneider was going to send the message; is that correct?

Mr. O'CONNOR. Yes.

Mr. MICA. And then you said to one of my colleagues over here that you couldn't remember what Tom told you about the meeting.

Mr. O'CONNOR. I don't recall if I said that, because I do recollect, one, that Schneider did call me and that he did say that he had talked to Ickes and that he did say that Ickes would look into it. That's my recollection.

Mr. MICA. See, the problem I have, and maybe we could pull this up, is exhibit 356–45. The chairman had finished with some questioning about tying this all together and your involvement. See, I am not an attorney. I am experienced in politics, but this is pretty damaging when you look at that document, 356–45, and you see on your entry, and I think you are PJO, on 7–14–95, the day the project was killed, in your notes it says discussions regarding necessity to followup with Harold Ickes at the White House, who you didn't talk to, Don Fowler with the DNC, and Terry Mac, it must be McAuliffe unless there is somebody else by that name, at the Committee to Re-elect, outlining fund-raising strategies.

We see the $50,000 trail there that has been brought out today. Then, on the same page, 7–20, a few days later, PJO, it looks like you again, somebody has doctored this, briefing with Larry Kitto on my conversations with Chairman Fowler of the DNC, discussion regarding thank you letters to White House and Members of the Congress, discussions regarding fund-raising.

This is the partner who raised some $300,000. So it looks like you had past support, which we all know about, and people do support folks over time, but then there is some pretty clear linkage to the day of the rejection, and then a direct followup to pay the balance due. What do you think?

Mr. O'CONNOR. Congressman, first in connection with the notation that occurred on the 14th, those discussions with Mr. Kitto took place in Minneapolis, and they took place before I was aware that the Interior had turned down the application.

Mr. MICA. It is just ironic it was the same day? No one told you in advance that it was going to be denied? You don't think that you all had done your deed?

Mr. O'CONNOR. No, I had no knowledge in advance. And the first knowledge I had of it was when our office in Washington received the press release from Interior, and I believe either that afternoon or the following day, it was faxed to me in Minneapolis.

Mr. MICA. We are investigating this because a Federal judge has looked at this. There has been a complaint about this. In fact, political influence might have occurred with this decision. That is our concern. Thank you, Mr. Chairman.

Mr. BURTON. The gentleman's time has expired.

Mr. Souder.

Mr. SOUDER. Thank you, Mr. Chairman. One thing I just want to insert in the record, it probably has already been inserted before, is exhibit 297–A–6, which was a local BIA finding based on the studies of Dr. Murray and Arthur Andersen. It says three times in response to comments and questions that the findings of Dr. Murray and Arthur Andersen Inc., indicate that the market size is of sufficient size to support an additional casino operation and will not saturate the market.

The reason that is important is because that is why all this political lobbying has taken place because at the local level they did the study, determined this, and they had to bring in high-powered lobbyists to combat them. I wanted to followup a little bit, Mr. O'Connor, and I talk real fast, so I will try——

[Exhibit 297A follows:]

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Lakes Agency
Ashland, Wisconsin 54806-0273

IN REPLY REFER TO

Natural Resources

September 14, 1994

Stanley Crooks, Vice Chairman
Minnesota Indian Gaming Association
Rt. 2, Box 95
Cass Lake, MN 56633

Dear Mr. Crooks:

Enclosed with this transmittal are our responses to comments we received regarding the environmental assessment, addendum and DRAFT Finding of No Significant Impact (FONSI) action for the proposed trust acquisition of, and addition of Class III gaming to, the St. Croix Meadows Greyhound Racing Park in Hudson, WI. This action is proposed by the Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa and the Sokaogon Chippewa Community. Also included is additional information requested by our Agency, regarding possible impacts to air quality and traffic flow.

Based upon these documents, it has been determined that the proposed action will not have significant environmental impacts and the preparation of an environmental impact statement will not be necessary. Enclosed is a copy of the Final FONSI for your review.

Thank you for your comments and participation regarding this matter. Contact Mark Kuester, Natural Resources Specialist at (715) 682-4527 for further information.

Sincerely,

Superintendent

Enclosure

EXHIBIT
297A-1

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Lakes Agency
Ashland, Wisconsin 54806-0273

IN REPLY REFER TO:
Natural Resources

FINDING OF NO SIGNIFICANT IMPACT

An addendum (referred to as the Addendum) to the "Environmental Assessment for St. Croix Meadows Greyhound Racing Park, Hudson, Wisconsin, January 1988" (referred to as the EA), has been prepared for the proposed trust acquisition of, and addition of class III gaming to, the St. Croix Meadows Greyhound Racing Park by the Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa Indians, and the Sokaogon Chippewa Community. These documents have been prepared pursuant to requirements of the National Environmental Policy Act (NEPA) in 40 CFR Parts 1500-1508. The addendum was prepared by Bischof & Vasseur from Oak Park, Illinois, and the EA was prepared by Mid-States Associates, Inc.

Project Description

The Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa Indians and the Sokaogon Chippewa Community propose to purchase, and place into federal trust, 55.82 acres consisting of the St. Croix Meadows Greyhound Racing Facility including the principal structure, track facilities, paddock and kennel facilities and parking lot to the north of the principal building, for the purpose of operating a class III gaming facility in addition to the existing pari-mutuel dog track operation. The main parking lot west of the grandstand building is not intended for trust acquisition.

The existing grandstand would be remodeled to accommodate gaming activities, however, most support facilities (kitchen, washrooms, office space, etc.) would be maintained.

Need for Project

The Three Tribes anticipate the generation of revenues from the proposed project that are needed for community development for each Tribe.

EXHIBIT
297A-2

Project Alternatives and Possible Impacts

Three alternatives have been proposed. "Alternative One" is the proposed project. Several possible impacts have been addressed in the Addendum regarding this alternative. Possible negative socioeconomic impacts on the City of Hudson and St. Croix County, have been addressed and minimized through the "Agreement for Government Services" developed between the City, the County and the three Tribes. Possible negative impacts to Tribes with gaming facilities in the general area of the proposed facility are also addressed in the EA addendum and are expected to be minimal. It is not the intent of the NEPA process to limit competition for business profits. Possible social impacts are addressed in both the addendum and the original EA. The proposed project is projected to have similar attendance as the original dog track facility was designed to manage, and the impacts to the social environment would, similarly, not be considered significant. The addition of one form of gaming to a facility, already established for the purpose of gaming, would also not be considered significant.

"Alternative Two", proposes that the three Tribes would construct a new Tribal gaming facility at an alternate location. This alternative would have similar impacts as the proposed action and would include the environmental impacts associated with constructing an entire new facility.

"Alternative Three" is the "No Action" alternative. The environmental impacts associated with this alternative would be minimal, however, the proposed need to gain revenues to enhance Tribal community development would not be met.

Findings and Conclusion

Based upon the findings of the EA and the Addendum regarding this proposed action and the alternatives considered, it has been determined that the proposed action will not have a significant impact on the quality of the human and/or natural environment, and the preparation of an Environmental Impact Statement will not be necessary.

Robert C. Jaeger
Superintendent, Great Lakes Agency

9/14/94
Date

RESPONSES TO COMMENTS REGARDING THE PROPOSED DOG TRACK/CASINO FACILITY IN HUDSON, WI

St. Croix Tribe

COMMENT: "Clearly this assessment is inadequate in view of the complete lack of analysis of the respective tribal markets..."

RESPONSE: A market analysis was performed regarding this proposed action and was submitted during the process required by the Indian Gaming Regulatory Act (IGRA). An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Racetrack Near the City of Hudson, Wisconsin, by Dr. James M. Murray, PhD., indicates that the proposed Hudson casino/dog track facility could have a 20% share of the blackjack market and a possible 24% of the slot and video market in the primary market zone (predominately St. Croix County in WI, and Washington and Ramsey Counties in MN). Based upon this analysis, the socioeconomic impacts to surrounding tribal casinos do not appear to be "devastating". Although the socioeconomic impacts regarding this proposed action are real, and are considered in the environmental assessment process, they do not normally require the preparation of an environmental impact statement. These comments are more appropriately addressed in the IGRA process.

COMMENT: "The artificial placement of competitor Tribes in geographic areas superior to that of the St. Croix Tribe gives official sanction to an unfair competitive advantage, something not envisioned by the NEPA process."

RESPONSE: The three Tribes, as well as the St. Croix Tribe, have the right to request land be placed in trust for the benefit of the tribe(s), by the US Government. It is not the intent of the NEPA process to limit this right. The tribes involved in this venture have clearly expressed their intent to diversify their respective economies and generate needed government revenues. Tribal casinos in the general vicinity of this proposed action are able to take various steps to make their facilities more attractive to gaming patrons. These comments are more appropriately addressed in the IGRA process.

COMMENT: "The current owners of the dog track, however, own considerable land surrounding the dog track and have extensive plans for the development of a destination resort."

RESPONSE: A "destination resort" is not part of the proposed plans, nor do the Tribes have economic control over non-tribal lands. This comment is beyond the scope of the decision related to this project, therefore, cannot be addressed in the scope of environmental impacts associated with the fee to trust conversion of the subject property.

COMMENT: "Allowing the three tribes and the present owners the opportunity to conduct those games at a location outside of their usual territory would cause a great injustice to the St. Croix people."

RESPONSE: This venture is geographically located within the treaty territory of the Lake Superior Chippewa Tribe, of which all three tribes are Bands. There is no limitation placed upon the St. Croix tribe, or any other tribe, to engage economic development ventures in other parts of the State or Country.

COMMENT: "Based upon previous discussion and information contained in Attachment A. the proposed findings and conclusion are not supportable. Additional studies in the form of an Environmental Impact Statement need to be undertaken in order to comply with the requirements of the National Environmental Policy Act."

RESPONSE: The findings of Dr. Murray and Arthur Anderson, Inc., (project specific, independent studies), indicate that the market is of sufficient size to support an additional casino operation and will not saturate the market. Again, these documents were submitted during the IGRA process and are more appropriately addressed in this venue. The requirements of the National Environmental Policy Act (NEPA) state in 40 CFR Part 1508.14, "that economic or social effects are not intended by themselves to require preparation of an environmental impact statement."

COMMENT: "The impact on jobs will be felt on the St. Croix Reservation where reductions in force will be necessary due to a declining business volume."

RESPONSE: The findings of Dr. Murray and Arthur Anderson, Inc. indicate that the market size is of sufficient size to support an additional casino operation and will not saturate the market. Profits and revenues generated by the venture will provide diversification opportunities for the member tribes at their respective reservations. Again, these types of comments are more appropriately addressed in the IGRA process.

COMMENT: "No mitigation efforts have been undertaken with regard to the potentially devastating impacts on the St. Croix Tribe and its ability to furnish essential governmental services."

RESPONSE: The findings of Dr. Murray and Arthur Anderson, Inc. indicate that the market size is of sufficient size to support an additional casino operation and will not saturate the market. Mitigation efforts, market analyses, business competition and revenues are more appropriately addressed in the IGRA process.

COMMENT: "That the dog track is a failing business is not a legitimate reason to take action to the detriment of a neighboring Tribe and its business. Adding the artificial stimulus of Class III gaming to prop up a failing non-Indian owned industry with the resulting devastating impacts on a neighboring industry does not qualify as a justifiable result under NEPA."

RESPONSE: The loss of jobs related to this financially troubled business is mentioned as a possible negative economic impact to the surrounding community. It is not given as a legitimate reason for the proposed action. The reasons for this action are, as stated in the environmental documents, to generate revenues, by the three Tribes, that are needed for community development on their respective Reservations.

COMMENT: "... This fee to trust conversion will stop in its tracks' any effort to expand the land base of the St. Croix Tribe due to greatly diminished revenues from its current gaming industry."

RESPONSE: The findings of Dr. Murray and Arthur Anderson, Inc. indicate that the market size is of sufficient size to support an additional casino operation and will not saturate the market. Little evidence of "devastating effects" as a result of this proposed action are provided in these comments. The findings of the professional and independent studies, referenced herein, indicate, with supporting documentation and analysis, that the St. Croix Tribe will not be significantly harmed by the proposed partnership venture. Again, these comments are more appropriately addressed in the IGRA process.

COMMENT: "The statements made in this paragraph (paragraph 3, page 2) are made without any supporting documentation. No effort was made to determine the true customer market of the St. Croix Tribe ... it is almost a certainty that the Hudson Dog Track area will encompass destination resort facilities, a far larger casino facility, . . there is no assurance made that the Hudson facility will maintain it's modest scope of 1500 machines and operational hours ..."

RESPONSE: The principle author of the Socioeconomic Addendum utilizes Dr. Murray's study and other proprietary market studies to support statements contained therein. (Proprietary sources include market studies for tribal and non-tribal, gaming and non-gaming business ventures, as well as Wisconsin Department of Tourism data and analysis.) The independent studies and analysis prepared by Dr. Murray and Arthur Anderson, Inc. utilized the best information available to the public, including information on the market of the St. Croix Tribe.

The three Tribes in this partnership do not have economic development control on non-tribal lands, nor have they indicated involvement in planning for on-site or off-site expansion.

Minnesota Indian Gaming Association

COMMENT: "... it is our contention that this action will have severe socilon/economic impacts on surrounding tribes."

RESPONSE: Attachment I of the Addendum cites, An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Racetrack Near the City of Hudson, Wisconsin, and An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, both by Dr. James M. Murray, PhD. These documents were submitted during the process required by the Indian Gaming Regulatory Act (IGRA) and were utilized, in part, to assess the gaming market, market shares and other related economic impacts. It was found in these and other studies performed in the primary market areas (predominately St. Croix County in WI and Washington and Ramsey Counties in MN) that the market is of sufficient size to support an additional casino operation and will not saturate the market.

Comments regarding economic or social effects are considered in the environmental assessment process, however, they are not intended by themselves to require preparation of an environmental impact statement. These comments are more appropriately addressed in the IGRA process.

Kenneth Tilsen

COMMENT 1: "The report fails to detail the relationship between the land to be placed in trust and the parking lot property, entrance gate, etc. which is part of the facility and will not be put in trust. It fails to identify the adjacent land that will remain exclusively in the control of the Florida gaming operator. It fails to identify the long history of community opposition to the track and it fails to identify the property as across the road from land protected by the "Wild River Act". It inaccurately indicates the track is open all year and fails to indicated that it operates about six days a week for between 32 to 40 hours a week - NOT 24 hours a day, seven days a week."

RESPONSE: The relationship between land taken into federal trust status for the Tribes is stated in several places in the Addendum and Attachments, the Notice of Availability, and the DRAFT Finding of No Significant Impact, where they indicate that the principal structure, track facilities, paddock and kennel facilities, and parking lot to the north of the principal structure are intended for trust acquisition while the main parking lot west of the grandstand building is not intended for trust acquisition. A legal description of the area of intended trust acquisition is provided in Attachment A of the Agreement for Government Services. The use of the "1988 Report" is to provide background information and data regarding work that had already been done regarding the dog track facility at this location.

Whether the adjacent lands to the track facility are controlled by a Florida gaming operator, or not, does not apply to this proposed action. There are no known plans for future development of these areas.

The Dec. 3, 1992, Indian Gaming Referendum, included in Attachment II of the Addendum, indicates that the Hudson Community is neither for, nor against, a Tribal Casino at the dog track facility. Some opposition to actions of this nature can be expected, however, based upon this referendum, it does not appear that there is overwhelming opposition to this concept.

Discussions with National Park Service personnel in St. Croix Falls, WI, indicate that the dog track facility is outside the management area of the St. Croix Wild and Scenic River System. Concerns regarding possible impacts to the St. Croix River from increased traffic and associated air pollution would be monitored and addressed through the existing air pollution control permit. According to the Wisconsin Department of Natural Resources, Bureau of Air Management, neither a new indirect source permit, nor modifications to the existing permit are required, however, the air monitoring stations constructed for the dog track facility would continue to be monitored and the terms of the permit would continue in compliance.

The statement that the track is open all year is accurate. The number of hours and/or days of facility operation per week does not render the statement inaccurate.

COMMENT 2: "There is no basis supplied for the conclusion that the project will have a positive impact on the economic growth and well being of the surrounding communities. Recent studies by the Ford Foundation, the Illinois Department of Safety and others suggest that the jobs lost will equal or exceed the jobs gained. No report by a biased observer was any value..."

RESPONSE: The new jobs created by this proposed facility would be available to unemployed residents of the Hudson area as well as to residents of St. Croix County and other counties nearby. These new jobs would provide workers at lower-paying jobs opportunities to increase individual earnings. Many of these jobs would be available to workers without special training, skills, undergraduate and/or post graduate degrees. It is reasonable to expect that increased earnings for area residents are likely to result in increases in the purchase of goods and services in these areas. Assertions to the effect that the proposed gaming facility would result in a loss of jobs in the Hudson area are not realistic.

Minnesota Gambling 1993 by Minnesota Planning describes many of the influences of tribal gaming in Minnesota and may be more applicable to gaming influences in the subject area of Hudson, WI, than documents from other localities. This document compares casino counties to noncasino counties in Minnesota and states, "There is no evidence that tribal gaming caused an increase in reported serious crimes such as murder, rape, robbery or theft. The crime rate for casino counties between 1989 and 1991 increased only slightly more than for noncasino counties... (14.8 percent compared to 12.1 percent)." Other positive influences documented include increases in gross business sales, increases in economic activity, increases in revenues of bars and restaurants, increases in visitors from other states and a decrease in county expenditures for Aid to Families with Dependent Children for counties with casinos compared to those without. Various negative social consequences are also discussed in this document including increases in calls for help to Gamblers Anonymous and as well as increases in visits to gambling treatment centers. It is expected, however, that the allocable amount determined by the "Agreement for Government Services" will compensate the local governments for the possible need for these services.

Attachment I of the Addendum cites two of the various documents, An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, and An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Racetrack Near the City of Hudson, Wisconsin, both by Dr. James M. Murray, PhD., that were

used to assess the economic impacts of the proposed dog track/casino facility to the Hudson Community and existing tribal casino markets. Information from these documents, along with others included in the application package pursuant to the Indian Gaming Regulatory Act (IGRA), was used to generate many of the estimates regarding socioeconomic impacts.

Competition between tribal casino facilities and possible impacts to each tribal community are discussed in these studies (by Dr. Murray), which show that the proposed Hudson casino/dog track facility could have a 20% share of the blackjack market and up to 24% share of the slot and video market in the primary market zone (predominately St. Croix County in WI, and Washington and Ramsey Counties in MN). This study indicates that the gaming market is of sufficient size to support an additional casino operation and will not saturate the market. Socioeconomic and business related matters are considered in the environmental assessment process, however, they are more appropriately addressed in the Indian Gaming Regulatory Act (IGRA) process.

The Indian Gaming Referendum of 12/3/92 specifically asked, "Do you support the transfer of St. Croix Meadows to an Indian tribe and the conduct of casino gaming at St. Croix Meadows if the tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" This referendum appears to ask the question that more appropriately addresses this proposed action than referendums regarding continuation of the dog track facility or State-wide surveys to limit casino gambling. This Indian Gaming Referendum of 12/3/92 indicates that there is not an overwhelming majority of citizens in the Hudson area for, or against, the operation of an Indian casino at the dog track facility. No comments from the Town of Troy, officially or unofficially, were received regarding the environmental impacts of this proposed action.

COMMENT: "The political social and practical effect of the Hudson dog track-to-casino proposal is as follows:"

1. It denigrates and erodes the concept of Indian Sovereignty

RESPONSE: The concept of Indian Sovereignty is one that has been argued for centuries and is beyond the scope of this action.

2. It leads to the erosion of public support for Indian Gaming rights.

RESPONSE: The erosion of public support for Indian gaming rights is beyond the scope of this action.

3. It breaks the solidarity of Indian Tribes in supporting each other.

RESPONSE: The solidarity of Indian Tribes in supporting each other is more appropriately addressed in the IGRA process and is beyond the scope of this action.

4. It gives movement and impetus to the drive for more non-Indian gaming.

RESPONSE: The movement for more non-Indian gaming is beyond the scope of this action and is more appropriately addressed in the IGRA process.

5. It does not promote or strengthen tribal government.

RESPONSE: The promotion and/or strengthening of tribal government is beyond the scope of this action.

6. It leads to the corruption of local and state officials and governments.

RESPONSE: Corruption regarding Indian gaming is an issue more appropriately addressed in the IGRA process.

William H.H. Cranmer

COMMENT (1): The FONSI and Addendum refer to this as a proposal by three Chippewa tribes to gain trust status for the land, in order to establish a casino. This is not an accurate statement of the facts.

RESPONSE: The statement is accurate. The association with Croixland Properties and other business arrangements regarding this matter does not render the statement inaccurate.

COMMENT (2): The FONSI and Addendum suggest that a casino would produce significant revenues for the tribes. The June 9, 1994 Bischof & Vasseur memo concerning "Impacts on Socioeconomic Conditions: in the Addendum points out, however, that each tribe will receive only 25% of the profits after debt service.

RESPONSE: The revenues for the Tribes, the profit shares, and after debt profits are issues more appropriately addressed by the Indian Gaming Regulatory Act (IGRA) process. No significant environmental impacts are expected as a result of these matters.

COMMENT (3): "The FONSI and Addendum suggest that an "Agreement for Government Services" (Agreement) between Croixland Properties, the three tribes, St. Croix County and the City of Hudson would "address and minimize""possible negative socioeconomic impacts on the City of Hudson and St. Croix County" (language in the draft FONSI)...this Agreement seems to violate 25 U.S.C. Section 2710 (d)(4) of the Indian Gaming Regulatory Act (IGRA), and Department of Interior policy... This agreement also incorporates a substantial annual payment to the Hudson School District not mentioned by the FONSI and Addendum. This payment is probably illegal under the IGRA, and probably violates Department of Interior policy..."

RESPONSE: The "Agreement for Government Services" is based upon the mutual consent of all signatory authorities, and the parties they represent, to provide government services to the proposed facility in exchange for an "allocable amount." It is not the imposition of a "tax" by a regulatory authority. There is currently no agreement between the gaming partners (the Partners) and the Hudson School District. Monies from the Agreement, to be provided to the Hudson School District by the City of Hudson (the City) or St. Croix County (the County) are not controlled by the Partners.

COMMENT (4): At no point did the County and City present a formal estimate of the cost of services to remedy the "possible negative socioeconomic impacts on the City of Hudson and St. Croix County," and provide services direct to the proposed casino. Bischof & Vasseur's Addendum also does not prepare such an estimate. Consequently, no one knows if the Agreement would adequately

"address and minimize" negative socioeconomic impacts, as the draft FONSI suggests.

RESPONSE: Monies that would be provided to the City and the County through the Agreement for Government Services are an "allocable amount" based upon information provided to the Tribes from the City and County governments. The signatory authorities for these governments, and the Council and Board they represent, are in ideal positions to assess the services necessary to address possible negative socioeconomic impacts, and estimate the costs to provide the services necessary to minimize these possible impacts.

COMMENT (5): "... the FONSI seems to confuse maximum capacity of the dog track with casino projections of average attendance ... Second, there is a good reason to think that a Hudson casino would attract more than an average of 7,000 patrons..."

RESPONSE: The Dog Track building and grandstand, after renovation, would, by State law, be able to hold 9,600 patrons based upon the number of square feet. This maximum peak capacity would restrict the number of people and vehicles able to patronize this facility.

COMMENT (6): The FONSI engages in sophistry when it says, "The addition of one form of gaming to a facility, already established for the purpose of gaming, would also not be considered significant." If that is true, why is Croixland Properties, the current owner of the Hudson dog track trying to move heaven and earth to get a casino license, even if it must be shared with Indian tribes?"

RESPONSE: Environmental impacts related to the addition of Class III gaming to the dog track facility would be almost entirely indirect as no expansion of, or exterior modifications to, the existing dog track facility are proposed.

COMMENT (7): One of the great weaknesses of the Bischof & Vasseur Addendum is that it ignores the empirical data and literature that has developed about costs of casinos. Robert Goodman in his 1994 nationwide LEGALIZED GAMBLING AS A STRATEGY FOR ECONOMIC DEVELOPMENT (funded by the Ford Foundation and Aspen Institute) comments that most gambling industry studies exaggerate benefits and understate costs..."

RESPONSE: A recent study by Minnesota Planning called Minnesota Gambling 1993 discusses many of the influences of Tribal casinos, and may be more applicable to the Hudson, WI, and Twin Cities area than documents from other localities. This document discusses the positive and negative influences of tribal casinos and provides comparisons of some of these influences between counties with and without casinos.

COMMENT (8): "It is interesting to see that the Bischof & Vasseur Addendum even gives slanted facts about the current track. It displays either ignorance or bias in its description of the track's placement in Hudson area geography, ... But the Addendum ignores all the homes to the west and northwest of the track.... further, most of the other residents of the Town of Troy are ignored in this description of local geography, even though these residents would have to use the same roads as casino patrons to drive to and from Hudson commercial areas and the freeway. The Addendum does not even mention that the Town of Troy surrounds the potential casino site on three sides..."

RESPONSE: Mention is made in the addendum and the original EA of residential areas surrounding the dog track facility. There seems to be no intent to slant or hide that fact in these documents. Traffic studies performed on the original dog track facility were based upon the total parking lot capacity for 4,400 vehicles. There are currently no plans to expand these parking facilities at this time. Recent projections regarding increased attendance of the proposed dog track/casino facility were submitted to the Wisconsin Department of Transportation (WDOT), who indicated that the Interstate 94/Carmichael Road Interchange is sufficient to adequately manage the additional traffic. Although no transportation system is likely to be developed that would assure that there will be no slow-down or delays during peak traffic periods, various methods would be utilized to manage delays should they occur. Some of these methods include varying dog track racing times so as to not coincide with peak casino attendance times, elimination of parking fees and gates for easy parking lot entry, use of shuttle buses and remote parking areas, possible adjustment of time delays on traffic lights during peak attendance times, and installation of traffic lights (see page 4, Attachment II of the Addendum).

No official, nor unofficial, comments were received from representatives of the Town of Troy regarding these documents. It is expected that alleged objections from the Town of Troy may be overstated, or that the Town's concerns have been resolved.

COMMENT (9): "Bischof & Vasseur also slants its facts about current track employment. There is a considerable gap between the May 23, 1994, Addendum, and Addendum Attachment I, a Bischof & Vasseur June 9, 1994 memo, "Proposed Tribal Gaming Facility Impacts on Socioeconomic Conditions." In the "Site Description" discussion in the Addendum, where track employment is not of material interest, Bischof & Vasseur states 282 employees currently work at the dog track. In the June 9 Attachment I, however, Bischof & Vasseur claims, "If the current dogtrack were to close down, it would generate a significant negative impact on the socioeconomic conditions of the study area through the loss of over 500 direct jobs, and 300 indirect jobs... Clearly, one or the other of these Bischof & Vasseur claims made less than three weeks apart is

incorrect. If the June 9 claim is incorrect, then a track closure would have far less impact on the Hudson economy than Bischof & Vasseur predicts... Moreover, in November, 1992, I checked Wisconsin Gaming Commission records for St. Croix Meadows contracts in the Hudson area. I found only five Hudson contracts for all of 1991 and 1992... These five contracts would have generated less than 10 jobs in the Hudson area, not the hundreds of jobs Bischof & Vasseur claims...*

RESPONSE: The 282 employees mentioned in the Addendum is referring to full-time employees while the 500 direct jobs discussed in Attachment I included approximately 200 seasonal and part-time positions. In any event, the loss of the 282 jobs is significant to many small communities. Direct contracts with service vendors is one of many forms of commerce that generate jobs. Many goods and services are purchased by the dog track facility without direct contracts. Race track employees living in and around Hudson, WI, St. Croix County and neighboring counties need food, shelter, clothing, community services, transportation and other goods and services. It is reasonable to expect that trucking companies, hardware stores, realty companies, barbers, department stores, clothing stores, auto sales companies, grocery stores, banks, schools, local/State/Federal governments and many others have gained customers and/or benefactors and have increased business sales as a result of these employees. Increased business sales can, in many cases, generate ancillary jobs.

COMMENT (10): *The Addendum claims that placing the track site in trust and creating a casino, *...will have a positive impact on the economic growth and well being of surrounding communities.* No evidence is cited for this assertion...*

RESPONSE: The new jobs created by this proposed facility would be available to unemployed residents of the Hudson area as well as to residents of St. Croix County and other counties nearby. These new jobs would provide workers at lower-paying jobs opportunities to increase individual earnings. Many of these jobs would be available to workers without special training, skills, undergraduate and/or post graduate degrees. It is reasonable to expect that increased earnings for residents of the Hudson Community, St. Croix County and nearby counties are likely to result in increases in the purchase of goods and services in these areas.

Minnesota Gambling 1993, by Minnesota Planning, states, *Casino counties in Minnesota experienced $182 million more in economic activity in 1990 and 1991 than they would have if they had grown at the same rate as the rest of the state. Revenues of bars and restaurants in casino counties grew by 10.7 percent between 1989 and 1991, compared to 5.4 percent for non-casino counties. These figures do not include bars and restaurants in casinos.* Other positive economic benefits described in this document include

increases in overall business sales and economic activity, increases in visitors from other states and decreases in county expenditures for Aid to Families with Dependent Children. Negative social consequences described in this document include increases in calls to gamblers anonymous and increased visits to problem gambling treatment centers. It is expected, however, that the allocable amount determined by the "Agreement for Government Services" will compensate the local governments for the possible need for these services.

COMMENT (11): The Addendum comments that "no new significant effects" of noise levels or facility lighting "are expected" because of the operation of a Hudson casino... Clearly a dog track that sends 500 to 1,000 customers home at 11 p. m. four nights per week will differ in impact on residents' lives and property values from a 24-hour per day, 7,000-15,000 customers per day casino...

RESPONSE: Increased activity at the Hudson dog track facility would involve the movement of additional vehicles in and out of the proposed facility. This increased traffic is not expected to significantly increase noise levels in the area as toll gates to the parking facility would be removed reducing delays in entering and exiting the facility. The original lighting system for the dog track facility was required to reduce the light spillage at the property lines to an amount equivalent to residential streets. There are no plans to modify the existing lighting system.

COMMENT (12): "The Addendum comments that "no significant short-term, long-term, or cumulative impacts are expected on urban services" because of a new Hudson casino. The Addendum specifically mentions public safety expenditures as one of these services... however, all the surrounding casino towns have found the need for more police expenditures because of increased crime and traffic problems..."

RESPONSE: Minnesota Gambling 1993, states, "From 1989 through 1991, there was no evidence that tribal gaming caused an increase in reported serious crimes such as murder, rape, robbery or theft. The crime rate for casino counties between 1989 and 1991 increased only slightly more than for noncasino counties other than Hennepin, Ramsey, Washington, Anoka and Dakota counties (14.8 percent compared to 12.1 percent)." This document discusses casino impacts in and around Minnesota communities and may be more applicable to the subject area. Increased crime does not seem to be a major problem for these counties. Attachment II of the Addendum states, "St. Croix Meadows first opened in 1990 after a long and involved approval process. Since it opened, none of the earlier negative predictions concerning increased crime, etc., have come true...".

Due to the increased demand for housing to accommodate new employees and their families. Many of these employees would be in higher-salaried, managerial positions who would be able to purchase

homes in the Hudson area. Many other families would have both heads of household working at the new facility with two incomes to increase buying power for area homes. It is reasonable to expect that property values around the proposed Hudson track/casino facility would increase. Comments referring to people "fleeing from crime and congestion" regarding the advent of this proposed casino/dog track appear to be overstated.

COMMENT (13): "The Addendum comments, "No new significant short-term, long-term, or cumulative impact is expected on area traffic and ambient air quality of the proposed action." ... A dramatic increase in traffic, and some air degradation is bound to result along Carmichael Road south of the freeway interchange... At the moment, since there has been no new traffic study at that interchange, nobody knows whether or not 1989 traffic estimates are correct..."

RESPONSE: The "indirect source permit" regarding air pollution for the Hudson dog track facility was based upon the size of the parking lot. The Wisconsin Department of Natural Resources, Bureau of Air Management Planning Section has reviewed the proposed modifications and stated in a recent letter, "As there will be no physical modifications to the parking lot, there are no requirements for any modifications to the existing permit or for the issuance of a new permit." The regulatory aspects of this State of WI permit would still apply as the parking lot would continue to remain in taxable status. Attachment II states, "... air monitoring stations were constructed at the track ... there are no known instances of air quality being monitored at levels not acceptable to EPA standards. The traffic flow to and from the casino and track facility should be dispersed sufficiently to maintain air quality standards well within acceptable limits."

The traffic study in the original EA was based upon traffic projections in the year 2011. Peak traffic estimates were provided to the WDOT regarding the new casino/dog track facility. WDOT Planning Section Personnel have reviewed these estimates and have not identified any significant problems regarding the proposed traffic increase on the Interstate 94/Carmichael Road interchange.

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

WISCONSIN
DEPT. OF NATURAL RESOURCES

George E. Meyer
Secretary

101 South Webster Street
Box 7921
Madison, Wisconsin 53707
TELEPHONE 608-266-2621
TELEFAX 608-267-3579
TDD 608-267-6897
AIR MGMT FAX 608-267-0560

August 16, 1994

File Code: 4509

Mr. Louis Vasseur
838 South Taylor
Oak Park, IL 60302

SUBJECT: Requested Information on St. Croix Meadows - Hudson, Wisconsin (Permit Number 91-CPB-062)

Dear Mr. Vasseur:

This letter is written as a follow up to our conversion regarding the necessity of an indirect source permit for the St. Croix Meadows facility in Hudson, Wisconsin.

From my understanding, the use of the facility may change somewhat as a result of some ownership changes, but there will be no physical modifications to the parking lot. As there will be no physical modifications to the parking lot, there are no requirements for any modification to the existing permit or for the issuance of a new permit. However, I do request that you send me a letter giving the name and business address of the new owners (partners). This information will be placed in the facility files.

Additionally, I have attached a copy of the latest indirect source permit issued to Croixland Properties. Should you have any questions or concerns, feel free to call me at (608)267-0869.

Sincerely,

John F. Meier

John Meier, Air Management Specialist
Planning Section
Bureau of Air Management

Attachment

cc: Ralph Patterson - AM/7

EXHIBIT
297A-20

WISCONSIN
DEPT. OF NATURAL RESOURCES

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

101 South Webster Street
P.O. Box 7921
Madison, Wisconsin 53707-7921
TELEPHONE 608-266-2621
TELEFAX 608-267-3579
TDD 608-267-6897

July 8, 1991
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IN REPLY REFER TO: 4509

Mr. Burton L. Nordstrand
Croixland Properties Limited Partnership
512 Second Street
Hudson, WI 54016

Dear Mr. Nordstrand:

Your application for an air pollution control permit for modification of the St. Croix Meadows greyhound racing facility in Hudson, Wisconsin, has been processed in accordance with sec. 144.392, Wis. Stats.

The enclosed permit is issued to provide authorization for your source to be modified and operated in accordance with the requirements and conditions set forth within Parts I and II of the permit. Please read it carefully. A release for permanent operation (construction release) will be issued after verification that the source was modified and initially operated according to the plans and specifications as approved by the Department.

This permit supersedes the air pollution control permit for your source issued on July 6, 1989 (permit number 89-CPB-003).

Enclosed with the permit there is a bill for the cost of reviewing and acting upon your air pollution control permit. This bill is due and payable in 30 days of the date of the issuance of the permit. This fee should be made payable to Wisconsin Department of Natural Resources and returned to the address on the bill.

The fee has been calculated under the provisions of sec. NR 410.03, Wis. Adm. Code, as follows:

Basic fee for permit to modify an indirect major source	$3,000
Basic fee reduction for applicant publishing public notice	-100
Additional fee for holding public hearing at request of applicant	500
TOTAL FEE	$3,400
Portion of fee submitted with application	-500
REMAINING FEE	$2,900

EXHIBIT
297A-21

This permit may be revised as a result of rulemaking by the Department or the adoption of standardized permit forms and procedures which may differ from this document. At the time of such revision, permits reflecting these changes will automatically be issued.

A copy of this permit should be available at the source for inspection by any authorized representative of the Department. Questions about this permit should be directed to the Bureau of Air Management, P.O. Box 7921, Madison, Wisconsin 53707, (608) 266-7718.

NOTICE OF APPEAL RIGHTS

This decision is effective immediately unless the permit holder appeals the permit as set forth herein.

Any person aggrieved by this decision may appeal this decision by serving a petition for a contested case hearing for administrative review of this decision on the Secretary of the Department of Natural Resources under section 144.403, Stats., within 30 days after the date of mailing of this decision. Any petition for a contested case hearing under section 144.403, Stats., shall set forth specifically the issue sought to be reviewed, the interest of the petitioner, the reasons why a hearing is warranted and the relief desired. This notice is provided pursuant to section 227.48(2), Stats.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

Christopher P. Bovee

Christopher P. Bovee, Environmental Specialist
Planning Section
Bureau of Air Management

Enclosure

cc: Air Enforcement Branch - EPA, Region V
Western District Air Program

EXHIBIT
297A-22

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
BUREAU OF AIR MANAGEMENT
FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION

Findings of Fact

The Department of Natural Resources (DNR) finds that:

1) Croixland Properties Limited Partnership, 512 Second Street, Hudson, Wisconsin 54016, has applied for an air pollution control permit. The authorized representative of the facility is Burton L. Nordstrand, Chairman, Management Committee.

2) Croixland Properties Limited Partnership submitted an air pollution control permit application and plans and specifications and any additional information describing the air pollution source on June 5, 1990, September 7, 1990, October 26, 1990, November 29, 1990, January 25, 1991, February 7, 1991, February 12, 1991, February 26, 1991, and March 1, 1991.

3) DNR has reviewed Croixland Properties Limited Partnership's air permit application and the plans and specifications submitted to DNR.

4) This permit is for a major, modified, attainment area air pollution source.

5) DNR has complied with the procedures set forth in s. 144.392, Stats.

6) The proposed air pollution source meets all of the applicable criteria in s. 144.393, Stats.

7) DNR has complied with the requirements of s. 1.11, Stats., and ch. NR 150, Wis. Adm. Code.

8) DNR has considered the Environmental Assessment for this project and the comments received on it.

9) Consistent with social, economic and other essential considerations, DNR has adopted all practical means to avoid or minimize environmental harm.

Conclusions of Law

DNR concludes that:

1) DNR has authority under s. 144.31(1)(a), Stats., to promulgate rules contained in chs. NR 400-499, Wis. Adm. Code.

2) DNR has the authority under ss. 144.31(1)(a), (e), and (f), 144.375 (4) and (5) and 144.394, Stats., and chs. NR 400-499, Wis. Adm. Code, to establish emission limits for sources of air pollution.

3) DNR has the authority to issue air pollution control permits and to include conditions in such permits under ss. 144.391, 144.392, 144.393 and 144.394, Stats.

4) The emission limits included in this permit are authorized by ss. 144.394, Stats., and NR 415.04, Wis. Adm. Code.

5) DNR is required to comply with s. 1.11, Stats., and ch. NR 150, Wis. Adm. Code, in conjunction with issuing an air pollution control permit.

Decision

Croixland Properties Limited Partnership is authorized to modify and operate a greyhound racing facility located at County Trunk Highway "F" and Tower Road, 1.5 miles south of Interstate Highway 94, in the City of Hudson, St. Croix County, Wisconsin, as described in plans and specifications dated June 5, 1990, September 7, 1990, October 26, 1990, November 29, 1990, January 25, 1991, February 7, 1991, February 12, 1991, February 26, 1991, and March 1, 1991, in conformity with the emission limits, monitoring, recordkeeping and reporting requirements and specific and general conditions set forth elsewhere in this permit.

AIR POLLUTION CONTROL PERMIT

ATTAINMENT AREA MAJOR SOURCE

EI FACILITY NO. N/A PERMIT NO. 91-CPB-062

STACK NO.(S). N/A TYPE: Permit to Modify and Operate

SOURCE NO.(S). N/A

PERMISSION TO COMMENCE MODIFICATION ENDS EIGHTEEN (18) MONTHS FROM THE DAY THIS PERMIT IS ISSUED. ONCE A RELEASE FOR PERMANENT OPERATION HAS BEEN ISSUED, THIS OPERATING PERMIT IS PERMANENT UNLESS ALTERED, REVOKED OR SUSPENDED.

In compliance with the provisions of Chapter 144, Wis. Stats., and Chapters NR 400 to NR 499, Wis. Adm. Code,

Name of Source: Croixland Properties Limited Partnership

Street Address: 512 Second Street
Hudson, Wisconsin 54016

Principal Officer or Authorized Representative, & Title:
Burton L. Nordstrand, Chairman, Management Committee

is authorized to modify and operate a greyhound racing facility located at County Trunk Highway "F" and Tower Road, 1.5 miles south of Interstate Highway 94, in the City of Hudson, St. Croix County, Wisconsin, as described in the plans and specifications dated June 5, 1990, September 7, 1990, October 26, 1990, November 29, 1990, January 25, 1991, February 7, 1991, February 12, 1991, February 26, 1991, and March 1, 1991, in conformity with the conditions herein.

This authorization requires compliance by the permit holder with the emission limitations, monitoring requirements and other terms and conditions set forth in Parts I and II hereof.

Dated at Madison, Wisconsin this 8th day of July, 1991.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
For the Secretary

By _____
Donald F. Theiler, Director
Bureau of Air Management

EXHIBIT
297A-25

PART I
SPECIFIC PERMIT CONDITIONS
FOR INDIRECT SOURCES

A. Particulate Matter Emission Limitations

1. Fugitive dust emissions from the construction and operation of the source shall be prevented by taking precautionary measures which shall include, but not be limited to:

   a) Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, or construction operations.

   b) Application of asphalt, oil, water, suitable chemicals, or plastic covering on dirt roads, material stockpiles, and other surfaces which can create airborne dust, provided such application does not create a hydrocarbon, odor, or water pollution problem.

   c) Covering or securing of materials likely to become airborne while being moved on public roads, railroads, or navigable waters.

   d) The paving or maintenance of roadways or parking lots so as not to create air pollution.

B. Carbon Monoxide Mitigation Measures

1. Before the source places more than 999 parking spaces into use, the following roadway conditions shall exist:

   a) A divided highway having at least two lanes in each direction travels from the source's exit ramp to the interchange of Interstate Highway 94 with Carmichael Road.

   b) The interchange of Interstate Highway 94 (I-94) with Carmichael Road has: (1) an exit ramp from eastbound I-94 having at least two lanes, (2) an exit ramp from westbound I-94, (3) an entrance ramp to eastbound I-94, and (4) an entrance ramp to westbound I-94 having at least two lanes.

   c) If accessing westbound Interstate Highway 94 from northbound Carmichael Road requires a left-turn, then northbound Carmichael Road has at least two exclusive left-turn lanes at its intersection with the entrance ramp to westbound Interstate Highway 94.

2. The permittee shall install and operate a carbon monoxide ambient air monitoring site in conformance with the Wisconsin Department of

Natural Resources (DNR) Air Monitoring Comparability Program guidelines, which are attached to this permit. Department approval is required for the specific location and design of the monitoring site prior to installation and start-up of the monitor. The monitor shall be located at a site approved by the DNR at a location near the exit of the St. Croix Meadows Greyhound Racetrack. Operation of the monitoring site shall commence no later than the opening date of the initial racing season at the St. Croix Meadows Greyhound Racetrack.

If any exceedance of the one-hour carbon monoxide standard of 40 milligrams per cubic meter (35 parts per million) or the eight-hour carbon monoxide standard of 10 milligrams per cubic meter (9 parts per million) is detected by the monitor, the permittee shall immediately notify the DNR's Western District Air Program, 1300 Clairemont Avenue, Call Box 4001, Eau Claire, WI 54702 (telephone number: 715-839-3756) and the City of Hudson-Department of Public Works (telephone number: 715-386-9021); and submit a written report to the Department of Natural Resources, Bureau of Air Management, P.O. Box 7921, Madison, Wisconsin, 53707, within fifteen (15) calendar days after the exceedance. The report shall include: the time of the exceedance; the hourly average carbon monoxide concentrations during the time of the exceedance; the time of and attendance at any racing event held during the time of the exceedance, within 24 hours prior to the start of the exceedance, or within 12 hours after the end of the exceedance; and information on any unusual event or malfunction that may have caused the exceedance.

Regular data submittals consisting of hourly average carbon monoxide concentrations shall be submitted to the Department of Natural Resources, Bureau of Air Management, P.O. Box 7921, Madison, Wisconsin 53707, within thirty (30) days of the end of each calendar month.

3. For purposes of this condition the phrases "applicable intersections" and "applicable traffic movements" are defined.

"Applicable intersections" means all signalized intersections on Carmichael Road between the St. Croix Meadows Greyhound Racetrack and Coulee Road (I-94 North Frontage Road).

"Applicable traffic movements" means:

-All straight-ahead movements north and south on Carmichael Road between the St. Croix Meadows Greyhound Racetrack and Coulee Road (I-94 North Frontage Road).

-The eastbound Crestview Drive left-turn onto Carmichael Road.

-The eastbound I-94 exit ramp right-turn onto Carmichael Road.

-The northbound Carmichael Road left-turn onto the westbound I-94 entrance ramp.

If the carbon monoxide monitor required in condition number 2. measures an exceedance of a carbon monoxide ambient air quality standard, then the permittee shall make arrangements with the Wisconsin Department of Transportation (DOT) or the City of Hudson to procure and provide DNR with traffic volume data and traffic response signal plan information along with an analysis of this information for all applicable intersections and traffic movements between the St. Croix Meadows Greyhound Racetrack and Coulee Road for the time period beginning three hours before the start of the exceedance and ending three hours after the end of the exceedance. This information shall be submitted to the DNR's Western District Air Program, 1300 Clairemont Avenue, Call Box 4001, Eau Claire, WI 54702. This information shall be provided in a summary form to DNR in a format approved by DNR and shall be supplied to DNR no later than 30 calendar days after the exceedance.

4. The definitions of "applicable intersections" and "applicable traffic movements" in condition number 3. also apply to this condition.

If an exceedance of a carbon monoxide ambient air quality standard has been measured within two miles of the St. Croix Meadows Greyhound Racetrack, or if DNR has reason to believe that such an exceedance has occurred, DNR may request and the permittee shall make arrangements with DOT or the City of Hudson to procure and provide DNR with traffic volume and traffic response data along with an analysis of this information for all applicable intersections and traffic movements between the St. Croix Meadows Greyhound Racetrack and Coulee Road. DNR shall specify in its request the time period for which such information is requested.

If no exceedance has been measured, DNR may make this request only if DNR has reason to believe that the following information indicates an exceedance has occurred:

a) carbon monoxide monitoring data, if available, including historical data,

b) meteorological data,

c) the times and attendance of events at the St. Croix Meadows Greyhound Racetrack,

d) carbon monoxide modeling results,

e) public comments or complaints to DNR regarding instances of poor air quality, if any, and

f) information pertaining to traffic congestion at any of the applicable intersections, if available.

Also, if no exceedance has been measured, DNR shall include in its request written justification as to why DNR has reason to believe that an exceedance has occurred.

When requested, the information shall be submitted to the DNR's Western District Air Program, 1300 Clairemont Avenue, Call Box 4001, Eau Claire, WI 54702. This information shall be provided in a summary form to DNR in a format approved by DNR and supplied to DNR no later than 30 calendar days after the date of the request. The permittee shall make arrangements with DOT or the City of Hudson to retain the data necessary to compile this information for at least one year, irregardless of whether DNR requests the data.

5. The elapsed time between the start of any two consecutive events at the St. Croix Meadows Greyhound Racetrack shall be at least six hours.

C. Other Specific Conditions

1. Construction Progress Notification

The permittee shall send the DNR's Western District Air Program, 1300 Clairemont Avenue, Call Box 4001, Eau Claire, Wisconsin 54702, construction progress reports every 30 days until a release for permanent operation is granted.

2. Initial Operation Notification

The permittee shall notify the DNR's Western District Air Program thirty (30) days prior to initial operation of the source covered by this permit.

3. Release for Permanent Operation

This permit does authorize an initial operation period of sixty (60) days for testing (if necessary) and Department evaluation of operation to assure conformity with the permit conditions. Permanent operation of the source(s) covered by this permit after the initial operation period is prohibited until a release has been issued by the Department.

4. This permit supersedes permit number 89-CPB-003, issued to Croixland Properties Limited Partnership on July 6, 1989.

Wisconsin Department of Natural Resources
Bureau of Air Management
Air Monitoring Section

Air Monitoring Comparability Program

The Department of Natural Resources' (DNR) Air Monitoring Section has established a program to audit air monitoring sites within the state covered under Section NR 404.06, Wisconsin Administrative Code. Data that is found to be accurate, precise, and comparable to DNR data will be determined to be comparable under terms of Section NR 404.06, Wisconsin Administrative Code. Comparability is a measure of the quality of the data and informs data users of the degree of confidence that can be placed in such data.

The Audit Program consists of the following:

1. Prior to beginning monitoring, the industry or other entity (or it's consultant):

   A. Prepares and submits to DNR a monitoring and quality assurance plan describing what procedures will be used to insure that data of good quality will be generated. The plan should include the operating procedures, preventive maintenance schedules, quality control checks on all phases of the operation (with acceptance limits), data reduction and validation procedures, and calibration schedules and procedures.

   OR

   B. Completes a copy of DNR's monitoring survey questionnaire which covers the items in "A" above.

   The information received is reviewed to determine the adequacy of the entity's monitoring program. Adequacy is based on a comparison with EPA's Quality Assurance Guidelines[1,2] for monitoring; where guidelines do not exist, good scientific practice is used. DNR then reports the results of this review to the entity. DNR's Air Monitoring Handbook is available for inspection at the Bureau of Air management as a guide for specific monitoring and quality assurance procedures.

2. Periodic, formal on-site inspections of all monitoring site(s) and equipment by DNR auditors. This inspection is conducted in the presence of the site operator. The initial site visit is best scheduled before monitoring begins so that the location of the site and the placement of the instrument probe may be reviewed to determine if they meet EPA siting criteria[3]. A review is also made of site operating procedures and record keeping to see if they adequately insure the production of good quality data. The results of this review are reported to the entity, with recommendations for improvements, if needed. Follow-up site inspections are scheduled only if deficiencies are observed.

3. Performance audits of the instruments are conducted and consist of either introducing a known quantity of the pollutant of interest into the monitor

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and measuring its response or measuring flow with an audit device. Usually five different concentrations are used. Flow rate checks on the instruments may also be performed. For high volume air samplers, five different resistance plates (or other flow audit device) are placed on the sampler and the flow rate measured.

The DNR attempts to conduct performance audits at all monitoring site(s) once each year. Evaluations of the audit results are sent to the entity; follow-up audits will be scheduled if problems are observed.

Criteria for Comparability

1. Operating and quality control procedures must be adequate to insure good control of the accuracy and precision of the data. The following procedures are generally considered part of an adequate quality control program:

   a. Use of EPA reference or equivalent methods as described in the Code of Federal Regulations.[4]

   b. Use of EPA Quality Assurance Guidelines[1,2] where they exist.

   c. For continuous analyzers:

      1. Frequent zero/span checks of the analyzers - daily is preferred. Results of zero/span checks should be used to determine instrument drift and possible need for instrument recalibration as well as to validate hourly concentrations.

      2. Multipoint calibrations of the analyzers whenever: a) zero/span checks exceed limits, or quarterly (90 day), whichever occurs first, b) instrument maintenance or adjustment affects response.

      3. Periodic checks and recertification of standards and flow dilution equipment used to calibrate continuous analyzers. The frequency of the checks or recertification will depend on the calibration system used and the quality of the pollutant standards.

      4. Audits of manual strip chart reduction or periodic checks of analyzer output versus automated data acquisition equipment readings.

      5. Data validation procedures to detect abnormal data patterns and determine if such hourly concentrations are accurate measurements.

   d. For Prevention of Significant Deterioration (PSD) monitoring, the requirements in the Code of Federal Regulations 40 CFR 58, Appendix B must be followed along with the guideline provided in U.S. EPA's "Guideline" document[3].

2. Performance audits of the analyzers must be satisfactory.

   a. High volume samplers - flow measurements must be within ±9% of the DNR flow values.

b. Continuous analyzers - reported concentrations must be within ±10% of the known DNR concentrations.

Comparable industrial/entity data is reported in DNR's Annual Air Quality Data Reports, and is annotated as such.

To Maintain Certification

1. The industry/entity must continue to meet the criteria for certification listed above.

2. The industry/entity must submit copies of their multipoint calibration data for their monitoring instruments to DNR on a quarterly basis. These data are reviewed for consistency between calibrations. If a calibration is significantly different than previous calibrations for the instrument, the industry will be asked to review this calibration and determine if it is indeed accurate and explain the difference.

3. All hourly pollutant concentrations, meteorological parameters, and 24-hour concentrations for total suspended particulate are to be submitted in "AIRS"[6] format to DNR on floppy diskette. The data submittal should be on a monthly basis and should be received by DNR no later than 30 days after the end of the month.

Any industry or other entity interested in participating in the Air Monitoring Comparability program should contact:

Julian Chazin, Chief
Air Monitoring Section
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, WI 53707
Telephone #: 608/266-1902

References

1. Quality Assurance Handbook for Air Pollution Measurement Systems Vol. I - Principles EPA-600/9-76-005 March 1976

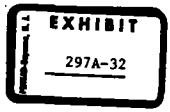
2. Vol. II - Ambient Air Specific Methods EPA-600/4-77-027a May 1977

3. Code of Federal Regulations - 40 CFR Part 58, Appendix D and Appendix E.

4. Code of Federal Regulations - 40 CFR Part 50 Appendices A through G.

5. Ambient Monitoring Guidelines for PSD (sources), EPA 450/4-87-007, May 1987

6. "AIRS" - U.S. EPA's Aerometric Information Retrieval System. Details available from the Air Monitoring Section.



GENERAL PERMIT CONDITIONS
FOR INDIRECT SOURCES
PART II

A. Scope

This permit is valid only for the structure, building, facility, equipment or operations specifically identified herein. All emissions authorized hereby shall be consistent with the terms and conditions of Parts I and II of this permit.

B. Prevention of Air Pollution

No person may cause, allow or permit the emissions of any air contaminant into the ambient air from a source subject to this permit which substantially contribute to the exceeding of an air standard or which cause air pollution.

C. Notification Requirements

Pursuant to sec. 144.394(3), Wis. Stats., and section NR 445.05 and 439.025(6), Wis. Adm. Code, the Department shall be notified of the following events:

Event	Timing
Hazardous substance air spill	Immediate-call: (608)266-3232
Malfunction or event not reported in advance which causes or may cause any violation of an emission limitation.	Within 8 hours of onset
Noncompliance with any other condition specified in this permit	Written notification within 5 days identifying noncompliance, cause, duration, and steps taken to prevent reoccurrence.

D. Right of Entry

Pursuant to sec. 144.34, Wis. Stats., the permittee shall allow authorized representatives of the Department of Natural Resources to enter upon the permittee's premises; to have access to and copy any records required to be kept under the terms and conditions of this permit; and to make any inspection necessary to ascertain compliance.

E. Permit Alteration, Revocation, Suspension

After notice and opportunity for a hearing, as provided in sec. 144.395, Wis. Stats., this permit may be altered, suspended, or revoked in whole or in part for cause, including but not limited to, the following:

1. A significant or recurring violation of any term or condition of this permit;

2. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

3. A change in any applicable rule; or

4. Failure to pay any required permit fees.

F. Civil Liability

Nothing in this permit shall be construed to relieve the permit holder from civil penalties under secs. 144.426, 144.96 or 144.99, Wis. Stats., for violation of the terms or conditions of this permit, or for violation of secs. 144.30 to 144.426, 144.76 and 144.96, Wis. Stats., or of any rule or any special order issued under those sections.

G. Other Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or to relieve the permit holder from any responsibilities, liabilities, or penalties established pursuant to any other applicable Federal, State, or local law or regulation. The issuance of this permit does not convey any property rights in either real or personal property, nor does it authorize any injury to private property or any invasion of personal rights.

H. Records Retention

All records and information resulting from any monitoring activities required by this permit shall be retained by the permittee for a minimum of three years (or longer if requested by the Department) pursuant to section NR 439.03, Wis. Adm. Code.

I. Reporting

Reports required by Part I of this permit, if any, shall be signed by an authorized representative of the permittee.

J. Confidential Information

Except for information determined to be confidential under sec. 144.33, Wis. Stats., any information or reports received by the Department in the permit application process, or subsequently obtained, will be available for public inspection at the offices of the Department of Natural Resources.

K. Notification of Transfer

In the event of a transfer of control of operation or ownership of the source, the permittee, prior to such transfer, shall notify its successor by letter of the need for a permit. A copy of this letter shall be forwarded to the Department.

L. Nonexempt Modifications

"Modification" means any change in the physical size or method of operation of a stationary source which:

(1) increases the potential amount of emissions of an air contaminant;

(2) results in the emission of an air contaminant not previously emitted; or

(3) results in the violation of an ambient air increment.

Any modification of the source(s) subject to this permit is prohibited unless the modification is an exempt modification or the modification is authorized by a permit. The following changes in method of operation are exempt modifications if the specified change does not cause or exacerbate the violation of an ambient air quality standard or increment and if the change in method of operation does not result in the violation of any other term or condition of this permit:

1. An increase in production rate if that increase does not exceed the operating design capacity of the source.

2. An increase in the hours of operation of the source.

3. Use of an alternate fuel or raw material if the source is designed to burn or use the alternate fuel or raw material and if that information is included in the plans, specifications and other information submitted under sec. 144.392(2), Wis. Stats. or under sec. 144.39(1), Wis. Stats. (1977).

4. Resumption of operation of a source after a period of closure if the existing equipment was continuously included in the source inventory as an existing source covered by plans under sec. 144.31(1)(f), Wis. Stats.

5. A change in ownership of the source.

M. Replacement

Unless authorized by a permit, replacement of the source(s) covered by this permit is prohibited.

N. Circumvention

Pursuant to section NR 439.08, Wis. Adm. Code, the installation or use of and article, machine, equipment, process, or method, which conceals an emission which would otherwise constitute a violation of an applicable rule is prohibited unless written approval has been obtained from the Department. Such concealment includes, but is not limited to, the use of

gaseous diluents to achieve compliance and the unnecessary separation of an operation into parts to avoid coverage by a rule that applies only to operations larger than a specified size.

O. Forfeitures

In addition to other penalties or remedies, sec. 144.426, His. Stats., provides that any person who violates this permit shall forfeit not less than $10 nor more than $25,000 for each violation. Each day of continued violation is a separate offense.

P. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

Q. Notice of Appeal Information

Under section 144.403, Wisconsin Statutes, any permit, part of a permit, decision or determination by the Department under sections 144.391 to 144.402, Wisconsin Statutes, becomes effective unless the permittee or applicant seeks a hearing by filing a petition with the Department within 30 days after the date of the action sought to be reviewed. The petition must name the Wisconsin Department of Natural Resources as respondent. It must also set forth specifically the issue sought to be reviewed, the interest of the petitioner, the reasons why a hearing is warranted, and the relief desired.

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EXHIBIT
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Peak Traffic Impacts

Assumptions:

Maximum Patron Occupancy: 9,600

REFERENCE:

Peak occurs at exit from the dogtrack from 4:30 - 5:30 PM, weekdays (Benshoof Assoc., Inc. - Traffic Study For City of Hudson South of I-94, November 15, 1988).

Dogtrack Peak: 2,655 outbound trips; 6,800 attendance (calculated).

Assumptions For Peak, Dogtrack/Casino Operations

Patron retention time:		
	Casino Player	1.5 hours
	Dog Track Player	3.0 hours
	Casino/Dog Player	2.5 hours
	Average Player	2.3 hours

Dogtrack/Casino Peak Duration = 2.3 hours

Occupancy at Peak = 9,600 Patrons

Caculations:

9600 patrons / 2.3 hours = 4,174 patrons/hour entering and exiting the facility during the peak period.

((0.85)(4,174 patrons/hr) / (vehicle / 2.2 patrons)) = 1,613 passenger vehicles/hour entering and exiting the facility during the peak period.

((0.15)(4,174 patrons/hr) / (bus / 40 patrons)) = 16 buses/hour entering and exiting the facility during the peak period.

[Note: 2.2 Patrons/Vehicle and 40 Patrons/Bus, per CH2M Hill, Air Pollution Control Permit for St. Croix Meadows Hudson Greyhound Racing Facility, Jan. 1989.]

Peak Traffic Volume Estimate:

1,613 vehicles/hr + 16 buses/hr = 1629 vehicles/hour entering and exiting the facility during the peak period (27 vehicles/minute).

Roadway Vehicle Storage Volume (I94 interchange south to casino/dogtrack facility):

((5280 feet) / (15 feet/vehicle))(2 lanes) = 704 vehicles

[Note: Distance from Charmichael Road to Dogtrack/Casino Complex = 1mile. Minimum, average vehicle length = 13 ft + 2 ft buffer space = 15 ft.]

Assumption: Traffic nearly stopped. Average speed = 5 mph.

(1,629 vehicles/hour) / (5 mph) = 326 vehicles in the roadway

Volume of Dogtrack/Casino traffic ingressing and egressing the facility :

Volume of the roadway: 326:704 (46%)

Wisconsin Department of Transportation

TRANSPORTATION DISTRICT 6
718 West Clairemont Avenue
Eau Claire, WI 54701-5108

94 SEP -6 AM 7:54

BUREAU OF INDIAN AFFAIRS
GREAT LAKES AGENCY

September 2, 1994

Mr. Mark Kuester
Bureau of Indian Affairs
Great Lakes Agency
615 Main St W
PO Box 273
Ashland WI 54806-0273

Dear Mr. Kuester: SUBJECT: IH94/Carmichael Road Interchange
St. Croix County

Thank you for the opportunity to review the anticipated traffic impacts from the planned Hudson Dog Track/Casino facility.

We have made a quick comparison of these traffic impacts with the traffic forecast used for the design of the IH94/Carmichael Road Interchange in 1989. From this quick look, it appears your anticipated traffic numbers can be handled by the existing interchange.

Due to the short time given to review, we have not studied the issue thoroughly; however, we are fairly confident the interchange will function fine with the planned dog track/casino.

We are assuming the proposal is also being reviewed by the City of Hudson. They operate and maintain the signals at the ramp terminals, and should be given an opportunity to comment.

If you have any questions or need clarification, please call 715-836-2807.

Sincerely,

Jeffrey P Kern

for M. L. Beckman, P.E.
Chief, Transp. Assistance &
Planning Section

MLB:cjh

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NATURAL RESOURCES

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Mr. O'CONNOR. Congressman, I didn't hear what you said.

Mr. SOUDER. It wasn't really directed at you, either. I wanted to followup with this. You indicated you didn't have a dinner with Al Gore, that it was a reception that you billed for, your records indicate, on May 24, 1995, that you had a dinner, but you said it was a reception.

Mr. O'CONNOR. Yes.

Mr. SOUDER. And you also billed for a conference with Peter Knight and David Strauss.

Mr. O'CONNOR. Yes.

Mr. SOUDER. Peter Knight is one of the Vice President's closest confidants and was chairman of Clinton/Gore 1996, a former Gore staffer, a lobbyist. David Strauss is Gore's Deputy Chief of Staff. He testified in Senator Thompson's committee about the Buddhist temple event, and said it wasn't a fund-raiser. You said you didn't have any discussions with Vice President Gore, right?

Mr. O'CONNOR. Say that again.

Mr. SOUDER. You had no discussions with Vice President Gore?

Mr. O'CONNOR. I had no discussions with Vice President Gore.

Mr. SOUDER. Any discussions with David Strauss? Did you have any discussions with David Strauss?

Mr. O'CONNOR. Yes.

Mr. SOUDER. What did you discuss with him and what did you ask him to do?

Mr. O'CONNOR. At that particular event, which was a reception over at the Mayflower, a reception for Vice President Gore, David Strauss was at that reception, so was I, and I did see him and I did talk to him.

Mr. SOUDER. And that's one of the reasons you bill for, my understanding earlier, that you billed for these fund-raising receptions because you hoped to be able to talk to people of influence at these receptions?

Mr. O'CONNOR. I billed for that because I did talk to people at that reception on that issue.

Mr. SOUDER. Do you believe that resulted in any help to you to talk to them? Is that why you bill for them?

Mr. O'CONNOR. Say that again?

Mr. SOUDER. I assume you're billing your clients for that because you assume that by meeting and talking to people like David Strauss at these receptions, it's helpful to your cause?

Mr. O'CONNOR. Yes.

Mr. SOUDER. Do you believe it was?

Mr. O'CONNOR. It's hard to say whether it was helpful or not. First of all, there were a couple of hundred people there at that reception, and I—and that was the first time that I introduced the subject to David Strauss. It was not a long or a substantive discussion at all. It was only the first time I introduced it to him. I did that. I did not follow it up with asking for appointments or discussing it in substance.

Mr. SOUDER. Did you introduce it to him hoping he would influence Vice President Gore?

Mr. O'CONNOR. No, I put it this way. I introduced the issue. It was my intention to have him know that I was involved in it. I didn't ask him to do anything. I just left it that way, with the

thought in mind that if I do have to or I do decide to talk to him later about it, I would call him up and get an appointment.

Mr. SOUDER. Isn't it partly, also hoping that if he's in some meeting somewhere, where he hears about something, he could be of aid?

Mr. O'CONNOR. Well, all that helps, you know, in my judgment, and I let him know of my involvement.

Mr. SOUDER. Is the same true of Peter Knight? Did you talk to Peter Knight?

Mr. O'CONNOR. Yes, and it was again the first time I introduced it, the subject, a very brief conversation. As I mentioned before, a crowded room, a lot of noise. That's all I did. I didn't ask him to do anything.

Mr. SOUDER. Would you say that the primary reason you went to that fund-raiser was to talk to Gore's close confidants, David Strauss and Peter Knight? Are they the two main people you wanted to see or who else were you targeting that night?

Mr. O'CONNOR. I usually go, or went, to Gore receptions, for whatever purpose. There was no prearrangement to see them there. Nor did I know whether they'd be there. But they were there. And I did raise—introduce the subject to both of them at that time.

Mr. SOUDER. And presumably while you've tried to explain that it's not direct billing hours, it's part of the minimum number of hours that your firm bills for, that presumably you billed for that because you talked to Gore's people that night?

Mr. O'CONNOR. Yes, I did. And also on that date I had another meeting and it was all coupled together in that billing.

Mr. SOUDER. Can I ask you one other question that I've been curious about for days of this hearing? Why did you include the Delaware North when the track wasn't owned by Delaware North?

Mr. O'CONNOR. You mean in my letter of May 8?

Mr. SOUDER. Yes.

Mr. O'CONNOR. At the time that this—I was preparing this letter, from information I had at hand at that time, I was satisfied that Delaware North were the owners of that track.

Mr. SOUDER. Who gave you that information?

Mr. O'CONNOR. I'm not certain—I got information from time to time from tribes. I got information from Larry Kitto. And I read articles that appeared in the Wisconsin Journal and other sources. So I can't tell you after 2½ years where I got it. But I was satisfied at the time that Delaware North were the owners of that track or I wouldn't have put it in.

Mr. SOUDER. So you never actually checked, though?

Mr. O'CONNOR. No, I did not.

Mr. SOUDER. Did you ever check to correct it?

Mr. O'CONNOR. No, I did not.

Mr. SOUDER. So Terry McAuliffe, apparently, and the White House thought that it was owned by Delaware North? Obviously, that's a leading question and I shouldn't have asked. I yield back.

Mr. BURTON. The gentleman's time has expired.

Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman. Let me begin, if I could, Mr. O'Connor, with a question which I think is substantiated

by the memos and the exhibits we have, referring specifically to exhibit 296. You have had a political relationship with Bruce Babbitt for over a decade, have you not?

Mr. O'CONNOR. I've known Bruce Babbitt for over a decade, that's correct.

Mr. SHADEGG. And you were the point man for raising money for him to qualify for Federal matching funds for the State of Minnesota in his race clear back in 1986, were you not?

Mr. O'CONNOR. You mean for Bruce Babbitt?

Mr. SHADEGG. For Bruce Babbitt's race.

Mr. O'CONNOR. May I inquire of my wife? I don't think so.

Mr. SHADEGG. Take a look at exhibit 296–A–1 and at exhibit 296–A–6, if you would, which is a memo generated by Fred Duval of the Babbitt campaign to Matthew Rueter in the Babbitt campaign, dated December 3, 1986, talking about matching State plan and it lists you as the contact for the Babbitt campaign for the State of Minnesota, the individual who was to interface with Fred Duval. And it refers to you as, quote-unquote, "in the bank."

[Exhibit 296A follows:]

MEMORANDUM

TO: FRED DUVAL

FROM: MATTHEW RUETER

DATE: DECEMBER 3, 1986

RE: MATCHING STATES PLAN

A) Overview

Our goal is to qualify for federal matching funds in 25 states by February 15, 1987. January 31 is the deadline for funds to be collected and submitted to the exploratory committee. This gives us a two-week window in the event we are faced with a shortfall.

Currently, we have identified and received commitments from in-state collectors in 25 states and territories. (Puerto Rico, Guam, Virgin Islands and Canal Zone are classified as states for the purpose of federal election law and, as such, are matchable.) We have identified contacts in another 19 states and territories. As we have not contacted all of these individuals, we cannot be certain of their receptiveness to a request for assistance.

Given the time constraints with which we are faced, it is essential that all staff identify and contact collectors within their states by December 15, 1986. In some cases, initial contact must be in the form of a phone call from Governor Babbitt. These calls must occur by December 15 so that details can be arranged by staff in time to effectuate solicitation.

The American Trial Lawyers are providing a safety net for our efforts. Under Bob Begam's direction, the organization is attempting to match in 20 states, though we anticipate success in 12-15. Bob hopes to have a briefing prepared and ready by December 7. Our efforts will be redundant in some states. I have asked Bob to supply me with a list of state contacts and phone numbers so that we can conduct a conference call with Governor Babbitt in early January. The deadline for Bob's effort is January 19. Funds will be delivered at the ATL dinner in Scottsdale on that date.

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The prospect for matching 20 states by February 15 is very good. However, we must be careful not to assume that a commitment necessarily will translate into a success. It is not unrealistic to secure commitments in 35-40 states in order to reach our goal of 25. Further, it is appropriate in most states to secure commitments from more than one individual

B) State Status To Date

State	Staff Contact	In-state Lead
Alabama	Jim Maddy	Mayor Arrington Bob Bergland

By December 15, Jim will have spoken with Bergland to discuss names of possible in-state collectors. Jim will also have spoken with Mayor Arrington to secure his commitment.

Alaska	Mary Jo Waits Jim Trant	self Larry Kinley

Mary Jo has committed to raise $5K through personal contacts. She will call her list by December 20 to gauge receptiveness. I will contact Mary Jo on December 23 to determine status. Larry Kinley will work his Alaskan contacts through his position on the Northwest Indian Fishing Commission. Trant is arranging a dialogue between Kinley and Bob Wise pursuant to Kinley's request

Arizona	Bob Wool	

Arizona will match on February 14, if not before. A low-dollar fundraiser is scheduled on that date

Arkansas	Fred DuVal Bob Woolf/Dave Eaton	Jim Guy Tucker Randolph Warner

Currently, Arkansas lacks an in-state lead. The best prospect is Tucker. Fred needs to make this call by December 15. Bob is reaching out to Warner through Eaton. Dave has been in touch with Warner and has sent material on BS. Bob will ask Eaton to secure an answer from Warner by December 10

California Duane Garrett self

Duane will match California.

Colorado Ronnie Lopez Pete Marellis

I am not clear that Marellis has actually been asked to undertake this effort and produce by January 31, or whether Ronnie means that Marellis will come through when asked. The distinction is important. Ronnie should clarify. Has Marellis been asked expressly to match by January 31?

Connecticut Bob Begam

Bob has an in-state person who has experience raising matching funds. He considers this state "in the bag." Woolf concurs and believes there is no reason to conduct redundant efforts. State will be matched and money delivered on January 19.

Delaware

We have a hole here. Nick Rizzo suggests a cold-call to William Egbert, president of Gash-Stull in New Castle. I will make the preliminary call to gauge Egbert's receptivity to a call from 55. Ed Norton will approach Tom Brokaw in January. Until then, we need to get something going.

Florida Fred DuVal Marvin Rosen
Bob Begam
Jim Trant Seminoles

Rosen has asked for a dinner. We have a tentative date of January 13. This has not been confirmed with Rosen. It needs to be. This ought to happen by December 15. Bob Begam has an in-state person and believes there is no doubt about his ability to match Florida. Jim Trant has pursued his contacts with the Seminoles. They are interested in doing something after the first of the year. Their idea is to put on a barbeque for 100-150 people. This may require a meeting between 55 and the leadership of the Seminoles. Trant will advise and suggest.

Georgia Fred DuVal Gordon Giffin
Charles Wahlheim

Fred advises restraint until Senator Nunn announces his intentions Neither Giffin nor Wahlheim have been asked to make a commitment to assist with the matching efffort. They must be called immediately upon learning of Nunn's decision. Fred will call Giffin; I will call Wahlheim. (From George Will's column in the *Washington Post*, it seems Nunn's decision will come later than originally expected. Will this change the thinking?)

Hawaii Bob Woolf Mike Longstreath

Mike has agreed to solicit in Hawaii, though he lacks an extensive network. On Friday, December 5, Chris is sending letters of introduction to his counterparts in the Hawaii governor's office as a prelude to Longstreath's efforts. I will contact Mike to inquire whether he intends to raise money from his business associates. Mike is a developer in Hawaii. It is unlikely that Mike will be able to match by January 31 or even February 15. If others have contacts in this state, we need to reach out to them.

Idaho Bob Segam

The trial lawyers have promised to deliver this state. As a fall-back, it is possible that Evans can be approached through the channels established during the election.

Illinois Fred DuVal Chas Wolf

In the bank

Indiana

There is a hole here. Perhaps BB ought to call the president of the University to ask him if he, or a designee, could host an event

Iowa Chris Hamel Milt Brown

Chris will secure a commitment from Brown by December 15. Chris guarantees that Iowa will match by January 31.

Kansas Fred DuVal

BB needs to call Gov Carlin by December 15.

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Kentucky

Big hole. Mazzoli is a possible contact, but is probably not a financial source. It is possible that a call from BB would elicit a name or two who might be willing to help. Rizzo gave us a cold-call contact whom I shall pursue.

Maine	Chris Hamel	Shep Lee

Chris will speak with Shep by December 15 to secure his commitment.

Louisiana	Ronnie Lopez Toby Kornreich	Tommy Boggs Helen Kohlman

Ronnie was not able to have a face-to-face with Boggs when in Washington recently. It is essential that Ronnie speak with Boggs by December 15 to get either his direct help or persons who will produce on Boggs' directive. Kornreich will ask the Kohlmans to host an event as a personal favor. She hopes to have an answer by December 9. Rizzo suggests BB call Moon Landrieu. Since Toby knows Moon, it is perhaps appropriate that she be asked whether she should call first to feel him out. I will inquire.

Maryland	Fred DeVal Matthew Rueter	Jim Rouse Sol Stern

Rouse is hosting a dinner in January, tentatively scheduled for the 15th. This needs to be confirmed with Rouse. It is anticipated that contributions will be received from Maryland, Virginia and DC in sufficient quantities to match each. We must open channels of communication with Rouse, or whomever is doing the detail work for the event, to ensure that our matching goals are met. Stern is in Australia until December 19. I'll give him 20 minutes to catch his breath, then I'll ask him to raise 5K separately from Rouse.

Massachusetts	Matthew Rueter	Nick Rizzo Bob Farmer

It's in the bank.

Michigan

No contacts. BB should call Gov. Blanchard.

Minnesota Fred DuVal Pat O'Connor

In the bank. O'Connor needs only be contacted to inform him that January 31 is our goal. We have missed eachother with our phone calls. I will reach him.

Mississippi Fred DuVal Gov. Winter

BB needs to call Gov. Winter.

Missouri

No contacts. Rizzo has suggested a cold-call to Floyd Warman. I will make the preliminary call.

Montana Fred DuVal Gov. Schwinden

BB needs to call Gov. Schwinden.

Nebraska Jim Maddy Bill Kerrey
Don Nelson
Bob Woolf Dan Parks

Jim will contact Kerrey and Nelson individually to ask that each commit to raise the matching funds. He will do so by December 15. Dan Parks is hosting a meet-and-greet breakfast on December 19 out of which the match will be raised. The preceeding night, Parks is hosting a dinner to raise money for the February 15th dinner in Phoenix. With all these possibilities, Nebraska looks good.

Nevada Matthew Rueter Nick Rizzo

Nick will match by January 25. He is in Las Vegas for five days in the end of January and will return with the funds.

New Hampshire	Matthew Rueter Chris Hamel	Nick Rizzo Dick Boley

Rizzo will match New Hampshire. Chris has received a commitment from Boley that he will raise the match. We are covered.

New Jersey	Matthew Rueter Mary Jo Waits	Nick Rizzo self

Nick is able to commit 1K by January 31. Mary Jo is able to do the same. I will have secured the remainder of the necessary commitments by December 20. BB should call former Attorney's General Bill Highland and David Wilentz.

New Mexico	Ronnie Lopez	Ed Romero

In the bank. Romero need only be advised of our January 31 target date.

New York	Fred DuVal	numerous

By December 15, Fred will put together a list of those who are assisting. This is in the bank. People need only be advised of the target date.

North Carolina	Chris Hamel Fred DuVal	Tom Bradshaw Haines Family

Michael Gomez committed to Chris that Tom Bradshaw, of First Boston in North Carolina, will raise the match. I will contact Michael for an introduction to Bradshaw, who has indicated that he wants BB for an event. Fred needs to contact his contact in the Haines family by December 15.

North Dakota

A big hole

Ohio	Bob Woolf	Al Ratner

Bob says that a call from BS to Ratner would ensure that Ohio is matched. This must happen by December 15.

Oklahoma	Bob Woolf Matthew Ruster	Alan Coles Cleta Mitchell

Bob needs to follow up with Coles. The original plan was to secure a commitment at the finance meeting on December 6-7. Bob should know by December 15 whether Coles can be helpful. Cleta Mitchell will host an event to raise the 5K. She will have an easier time if it is a "two-fer:" an event which raises money for her debt as well as BB's match. She needs a date and is amenable to anything in middle to late January.

Oregon	Tom Higgins	Norm Winningstadt Lynn Bergstein

Tom suggests that BB call Bob Noyce to ask him to call Norm Winningstadt to ask him to match BB as a personal favor to Noyce. Winningstadt is a proven Democratic fundraiser who is president of Floating Point, a hi-tech company in Portland. Tom's fall-back is Lynn Bergstein, who heads the Portland office of Northwest Strategies. If we do not have a commitment from Winningstadt by December 19, Tom will call Bergstein. BB must call Noyce by December 9.

Pennsylvania

It may be worth a call to Phil Baskin. BB should make preliminary calls to Mayor Caliguari and Larry Yatch.

Rhode Island

Bob Woolf has a contact who has a son in Phoenix in the construction industry. My recollection is that Bob is using their connection for the February 15th dinner. As a match in Rhode Island by February 15 does not appear crucial, at this point, we need not push this relationship for matching. Bob knows best how to capitalize.

Puerto Rico	Ronnie Lopez

Ronnie needs to identify and secure commitments from his contacts by December 15. It is Ronnie's belief that PR is in the bag. There is no reason to doubt his judgement. We need only have the lead people identified and notified of our target date.

South Carolina Matthew Rueter Dwight Holder

Holder has committed. He will have a one-on-one with BB sometime in the next two months. In the meantime, I will discuss with him the FEC regulations and general framework of matching funds efforts. He is in New York until December 8.

South Dakota Chris Hamel State Chairman

Chris will contact and secure a commitment from the state chairman by December 15.

Tennessee

No contacts. Chris made the suggestion that BB should call Sasser directly and ask to meet with him the next time BB is in DC.

Texas Fred DuVal numerous

By December 15, Fred will have compiled a list of those who are taking responsibility for matching Texas. It's in the bank.

Utah Fred DuVal ?? Owen
?? Price

Fred will contact each in early January

Vermont Fred Duval John Benton

Benton has committed to match from within his circle of business associates. He has promised that he will deliver from assured sources. BB should call Gov Kunin

Virginia Elaine Kamark self
Bob Woolf ?? Halpin

Elaine has committed to raise 1K. Halpin was to have been in Phoenix for the finance meeting at which time Bob intended to nail him for a commitment. That must be followed up by phone, if necessary. Bob should wring a commitment from him by December 15

EXHIBIT
296 A-9

Washington	Jim Trant	Larry Kinley
	Tom Higgins	Ron Dotzauer
	Bob Woolf	Peter LeSourd

Larry Kinley is a member of the Lummi tribe ands sits on the Northwest Indian Commission. Jim and Bob Wise were to speak December 3, as a prelude to a conversation between Bob and Kinley. Larry has committed to match Washington, the condition precedent being a discussion with a staff member and a commitment for a face-to-face with BB in the future. LeSourd is not a tested fundraiser. Anything from this source will be gravy.

West Virginia	Jim Maddy	Sally Richardson

Jim promises to match by January 31 and will consider it a personal embarassment if he fails. Richardson is the state chairperson.

Wisconsin	Dave Lewis

Dave felt confident after his trip into the state a few weeks ago. We have not spoken, so I cannot assess the potential. I will keep trying. It would be good, if anyone is seeing him over the weekend, to ask him for the names of his contacts and their respective commitments.

Wyoming	Chris Hansel	Gov. Sullivan

BB needs to call Gov -elect Mark Sullivan. Committee contributed 2K to Sullivan's campaign which had a budget of 200K. BB has not spoken with Sullivan since prior to the election. Rizzo suggested a call to Don Anselm., owner of the Outlaw Inn in Jackson Hole. It is not known whether BB and Anselmi have met, but he is Sullivan's top money guy.

District of Columbia	Matthew Rueter	self

Fred will supply a list which I can personally solivcit. Some DC money will be picked up at through the House dinner. If need be Pat O'Connor can be asked to help. We should be able to do this without an event. Fred needs to get list to me by December.

Guam Fred DuVal

Certainly not a priority, but BB could call the Gov. in Guam.

Virgin Islands Matthew Ruster Henry Kimmelman

BB needs to call Kimmelman.

Panama Canal Zone

No contacts of which I am aware

C) Assignments

1) Governor Babbitt to call:
   a. President of Notre Dame -- Indiana
   b. Governor Carlin -- Kansas
   c. Rep Mazzoli -- Kentucky
   d. Moon Landrieu -- Louisiana
   e. Governor Blanchard -- Michigan
   f. Governor Winter -- Mississippi
   g. Governor Schwinden -- Montana
   h. Former AG Bill Highland -- New Jersey
   i. Former AG David Wilentz -- New Jersey
   j. Al Ratner -- Ohio
   k. Bob Noyce -- for Winningstadt in Oregon
   l. Mayor Caliguiri -- Pittsburgh, Pennsylvania
   m. Phil Batkin -- Pittsburgh PA
   n. Larry Yatch -- Pittsburgh, PA
   o. Senator Sasser -- Tennessee
   p. Governor Kunin -- Vermont
   q. Ron Dotzauer -- Washington
   r. Governor-elect Sullivan -- Wyoming
   s. Don Anselmi -- Wyoming
   t. Henry Kimmelman -- Virgin Islands (NY)

EXHIBIT
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2. Fred Duval

   a. Call Jim Guy Tucker by December 15.
   b. Call Marvin Rosen to confirm date for event.
   c. Call Jim Rouse to confirm date for event.
   d. Call Gordon Giffin immediately upon Nunn's announcement
   e. Compile list of in-state collectors, with phone numbers, for New York and Texas by December 15.
   f. Call Owens and Price in Utah by January 7.
   g. Contact Haines family by December 15.
   h. Compile list of individuals to be solicited in DC by December 15.
   i. Call Dave Dolgin by December 15.

3. Chris Hansel

   a. Call Milt Brown by December 15
   b. Call Shep Lee by December 15.
   c. Call South Dakota state chairman by Dec. 15
   d. Identify and secure commitments from in-state collectors in Iowa, Maine and South Dakota by December 15.

4. Ronnie Lopez

   a. Confirm with Pete Marelli that he will produce matching money by January 31
   b. Confirm with Ed Pioners that he will produce matching money by January 31.
   c. Identify and secure commitments from in Puerto Rico by December 15
   d. Call Tommy Boggs for commitment or source in Louisiana by December 12.
   e. Call Boggs' contacts for commitments by 12/15

EXHIBIT
296 A-12

** TOTAL PAGE.13 **

Mr. LEEPER. Congressman, where is that reference please, if I may?

Mr. SHADEGG. Exhibit 296, page A–6. I think it pretty clearly shows that, wouldn't you agree?

Mr. O'CONNOR. This is the first time I have seen this.

Mr. SHADEGG. I think the document speaks for itself.

Mr. O'CONNOR. If I was asked, I assume I would help qualify him. I would have no reason not to.

Mr. SHADEGG. I think the document speaks for itself and pretty well shows that you were doing that.

Let me ask you, I am not yet able to reach any conclusions about the conduct of the Department of Interior in this particular instance, but I have to tell you by the conduct of the White House and the conduct of Mr. Ickes and quite frankly by your letter of May 8, I would like you to refer to that, that is exhibit 311 A–4.

Specifically at page 2, where you write that you would also like to relate the politics involved in this situation and at the first four points under the politics of this situation. In reflecting on that letter, do you now wish to disavow it and acknowledge that it was an improper letter and should not have been sent, that those materials should not have been included in the letter?

[Exhibit 311A follows:]

St. Croix Tribal Council

P.O. Box 287 Hertel, Wisconsin 54845 (715)349-2195 Fax (715)349-5768

FAX COVER SHEET

DATE: 5-8-95 NO: 386-3385

TIME: 2:05 p.m.

TO: Nancy Bisonette

FROM: Lewis Taylor

NUMBER OF TOTAL PAGES: 5

ORIGINAL TO FOLLOW BY MAIL: YES / NO

COMMENTS:

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BILL TO:

EXHIBIT
311A-1

St. Croix Tribal Council

L COUNCIL
P.O. Box 287 Hertel, Wisconsin 54845 (715)349-2195 Fax (715)349-8709

...ld Taylor
Tribal Chairman
Sand Lake Community

Beverly Benjamin
Vice-Chairman
Danbury Community

Curtis Beaulieu
Secretary/Treasurer
Maple Plain Community

Lee Butler
Tribal Administrator
Sand Lake Community

Phyllis Lewis
Member
Round Lake Community

EXECUTIVE SECRETARY
Mary Herrmann

COMPTROLLER
Grace E. Plaster

...COUNTANT
...ie J. Murphy

PLANNING DEPARTMENT
...chard F. Herrmann

JUDICIAL BRANCH
David Morris
Judge

Alternate Judge

TRIBAL ATTORNEY
Howard J. Bichler

George Morrison
Legal Affairs Specialist

Julie A. Nelson
Court Clerk

BIOLOGIST
Elizabeth Graff

ENTERPRISES
... Crow Casino
... Lake
... In The Wall Casino
...nbury
Chippewa Corners Cafe
Danbury Bingo
Round Lake Bingo
... Plain Bingo
... Lake Bingo & Casino
...HA
St. Croix Ojibwe Construction Co.

March 8, 1995

Mr. Jack Breault, Mayor
City of Hudson
505 3rd Street
Hudson, WI 54016

Dear Mayor Breault:

This letter is a followup to our conversation today regarding the conversion of the Hudson Dog Track to a Tribal Casino. The St. Croix Chippewa Indians of Wisconsin through its Tribal Council opposes that proposal. Impacts on the St. Croix Tribe's Turtle Lake Casino would be devastating. We have communicated this position to both Federal And State officials involved in this very important decision.

If there is anything we can provide or do to assist you in opposing or responding to this proposal, please do not hesitate to contact myself or my staff.

Sincerely,

Lewis Taylor
Tribal Chairman
St. Croix Tribal Council

cc: St. Croix Tribal Council

02147

EXHIBIT
3114-2

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400
FAX (202) 466-2198

May 8, 1995

Mr. Harold Ickes
Deputy Chief of Staff for Policy
and Political Affairs
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: Proposal pending at Interior to create trust lands at the Hudson Dog Track in Hudson, Wisconsin for an Indian Gaming Casino

Dear Mr. Ickes:

I appreciate your calling me concerning the above subject on Tuesday, April 25, and again on Wednesday, April 26. I assume these calls were prompted by my discussions with the President and Bruce Lindsey on April 24 when they were in Minneapolis. I returned your calls and talked to your assistant, Mr. Sutton, who advised that you were not in the office when I called. Since I had an appointment with Don Fowler on Friday, April 28, to discuss this matter, I decided not to try to contact you until after the Fowler meeting with the chairman of five of the many Minnesota and Wisconsin tribes that oppose the creation of the trust lands for gambling purposes and the bailout of the current dog track owners.

I have been advised that Chairman Fowler has talked to you about this matter and sent you a memo outlining the basis for the opposition to creating another gaming casino in this area. Since the Fowler memo was sent to you, the City Council of Hudson, Wisconsin, passed a resolution opposing the construction and operation of a casino at the dog track.

The Secretary of Interior has the discretion to create such trust lands if he finds:

1. it creates an economic benefit for the applicants, and
2. it does not create economic hardship for others.

The Minnesota and Wisconsin tribes who met with Interior officials explained the economic losses they would suffer if another casino were established in this area, due to the close

EXHIBIT
311A-3

EXHIBIT
37
Volz/96 KCM

proximity of their casinos. In addition, Coopers & Lybrand as well as Peat Marwick recently submitted to Interior a detailed analysis outlining the adverse economic repercussions that would result from this happening.

I am concerned that those at Interior who are involved are leaning toward creating trust lands. We requested a copy of the Arthur Anderson report which the petitioners commissioned which found no adverse financial impact. The copy submitted to us "blocked out" all of the vital information relating to the size of the operation, how many machines, tables, etc., which we need to know, as well as the statistics and reasoning used in determining that the surrounding casinos would not suffer a serious economic impact. We need this data in order to put our best case forward to Interior. We have no objection to Interior's submitting the Coopers & Lybrand or the Peat Marwick reports to the petitioners.

I would also like to relate the politics involved in this situation:

1. Governor Thompson of Wisconsin supports this project.

2. Senator Al D'Amato supports this project because it bails out Delaware North, the company that owns this defunct dog track and also operates another dog track in Wisconsin. Delaware North is located in Buffalo, New York.

3. The chairman of the Indian tribe in the forefront of this project is active in Republican party politics; this year he was an unsuccessful Republican candidate for the Wisconsin State Senate.

4. All of the representatives of the tribes that met with Chairman Fowler are Democrats and have been so for years. I can testify to their previous financial support to the DNC and the 1992 Clinton/Gore Campaign Committee.

5. The entire Minnesota (Democrats and Republicans) Congressional delegation oppose this project. The Wisconsin Democratic Congressional delegation (including Congressman Gunderson in whose district the dog track is located) oppose the project.

I certainly will appreciate it if you will meet with me and two representatives of the tribes as soon as you can work it into your schedule, since a decision by Interior is imminent. We are available on a 24-hour notice.

Yours very truly,

Patrick J. O'Connor

PJO:shy
Doc 26263

EXHIBIT
311A-4

blind copies:

1. Chairman Don Fowler - David Mercer
2. Larry Kitto
3. Persons attending Friday meeting with Fowler

O'CONNOR & HANNAN, L.L.P.
1919 Pennsylvania Avenue, N.W.
Washington, DC 20006-3483
(202) 887-1400
FAX (202) 466-2198

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COMMENTS: Jewis —
I faxed this to
Jches this morning.
TC

EXHIBIT
311A-6

Mr. O'CONNOR. I certainly do not want to disavow it and I do believe it was a proper letter.

Mr. SHADEGG. So—you're a lawyer, are you not, Mr. O'Connor?

Mr. O'CONNOR. Yes, I am.

Mr. SHADEGG. Do you accept the principle of the rule of law?

Mr. O'CONNOR. What is the rule of law?

Mr. SHADEGG. I think the rule of law is that decisions which are supposed to be made on the merits, based on the law, should not be influenced by, nor decided on the basis of the people who are backing them. And your letter, for example, points out to Mr. Ickes, Deputy Chief of Staff at the White House, that the project you oppose is supported by Republican Governor Thompson of Wisconsin. I presume your purpose in pointing out to him that a Republican Governor supported the project and you opposed it was that you wanted him to know that Republicans supported it and Democrats favored it; isn't that correct?

Mr. O'CONNOR. That was a long question.

Mr. SHADEGG. Your letter, items 1, 2 and 3.

Mr. O'CONNOR. Yes, I'll talk about any one of those if you wish me to.

Mr. SHADEGG. Each one of them make it very clear that you wanted Harold Ickes to know, point by point, that Republicans supported this license and Democrats opposed it.

Mr. O'CONNOR. I wanted Ickes to know, Congressman, exactly what I put in that letter.

Mr. SHADEGG. You wanted him to know that Thompson supported it.

Mr. O'CONNOR. I wanted him to know that Governor Thompson of Wisconsin supported this project.

Mr. SHADEGG. And you wanted him to know that Senator Al D'Amato, also a Republican, supported it?

Mr. O'CONNOR. Yes.

Mr. SHADEGG. And in the third paragraph you wanted him to know that the chairman of the Indian tribe in the forefront of the project was an active Republican?

Mr. O'CONNOR. That's correct. Whatever it says there, and that's what it says.

Mr. SHADEGG. And you wanted him to know that that gentleman had been a Republican candidate for the Wisconsin State Senate, didn't you?

Mr. O'CONNOR. That's right.

Mr. SHADEGG. And then in the next paragraph you wanted to make it very clear that you had met with the chairman of the Democratic National Committee, Mr. Fowler, and that you took a group with you and the entire group you took opposing the license were Democrats. You wanted him to know that?

Mr. O'CONNOR. I wanted him to know what it says in there. Yes.

Mr. SHADEGG. You wanted him to know that they had previously given money?

Mr. O'CONNOR. Yes, if that's what it said. I can—yes, that's correct.

Mr. SHADEGG. Do you know of any basis under IGRA on which Mr. Ickes or the Secretary of the Interior could have decided to turn the license down because it was supported by Republicans?

Mr. O'CONNOR. Say that again.

Mr. SHADEGG. Do you know of any basis under the Indian Gaming Regulatory Act which would have allowed either Mr. Ickes, Mr. Babbitt or anyone to turn down this tribe's request because it was being supported by Republicans?

Mr. O'CONNOR. No. There is no basis—the Interior made their decision based on the substance.

Mr. SHADEGG. Well, you sure wanted them to know something that wasn't substance. You wanted them to know politics.

Mr. O'CONNOR. Yes, I wanted to get his attention.

Mr. SHADEGG. You don't need to ask—if this paragraph began by saying I would appreciate it if you would give these people a meeting because they are members of your party, that might be one thing. But you specifically are going to the merits of this proposal. You're talking about who's supporting it, not whether or not he should meet with you.

You're saying Republicans support it; Democrats oppose it. Indeed, you go beyond that. You say Democrats who have provided financial support to the DNC oppose it. Is there anything under IGRA which would have allowed Mr. Babbitt or Mr. Ickes to turn this down on the basis of the fact that Democrats who oppose it had given money to the DNC?

Mr. LEEPER. Mr. Chairman, the witness has tried three times to answer the Member's question and at every attempt to answer, his answer has been interrupted. Would you let him answer?

Mr. BURTON. We will let the witness answer.

Mr. O'CONNOR. All right. I wrote this letter. I stand behind it. And I don't think there's anything improper at all in advising Mr. Ickes of the politics involved in this situation. At the time I drafted this letter, I had information from various sources that led—to satisfy me that these allegations were correct. I wrote the letter, it was sent to Ickes.

Mr. SHADEGG. I happen to think it's one of the most stunning examples of an acknowledgment in writing of an attempt to buy influence and affect a decision on a basis that is not permitted in the law.

Mr. O'CONNOR. Whatever you think, you think. I'm telling you what I think. And why I wrote it.

Mr. SHADEGG. I yield back the balance of my time.

Mr. BURTON. The gentleman's time has expired. Mr. Barr of Georgia.

Mr. BARR. Thank you, Mr. Chairman. Exhibit C–106 is a quote from a Federal district court judge, Barbara Crabb indicating that, quote, "There is considerable evidence that suggests that improper political pressure may have influenced agency decisionmaking." Exhibit C–104 lists one, two, three, four, five instances in which the Department of the Interior at levels below Secretary Babbitt made a decision or a finding that there was no reason not to approve the request of the tribe to expand their activities.

[Exhibit C–104 follows:]

Department of the Interior -- Positions in the Record

DATE	Department of the Interior Document	Recommendation
9-14-94	**FINDING OF NO SIGNIFICANT IMPACT ("FONSI")** Prepared by the Ashland, Wisconsin Office "[I]t has been determined that the proposed action will not have a significant impact on the quality of the human and/or natural environment, and the preparation of an Environmental Impact Statement will not be necessary."	**APPROVE**
11-15-94	**AREA OFFICE RECOMMENDATION** Minneapolis office of the BIA finishes its assessment of the application and sends strong recommendation to Washington that the application for a Class III gaming facility in Hudson satisfies Section 20 of IGRA.	**APPROVE**
4-20-95	**AREA OFFICE RECOMMENDATION** Minneapolis Area Office of the BIA sends Memo to Assistant Secretary of the Interior for Indian Affairs indicating that the three tribes' proposal complies with: (1) land acquisition regulations; (2) the National Environmental Policy Act; and (3) the required survey for hazardous substance on property to be acquired in trust and recommends "that after the requirements of the Indian Gaming Regulatory Act have been met, authorization should be provided to place the land into trust status for the benefit of the Tribes."	**APPROVE**
6-8-95	**DRAFT MEMO FROM THE INDIAN GAMING MANAGEMENT STAFF** "The staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community[.]"	**APPROVE**
Undated	**DRAFT MEMO FROM GEORGE SKIBINE TO THE ASSISTANT SECRETARY -- INDIAN AFFAIRS** "The staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community[.]"	**APPROVE**
7-14-95	**MICHAEL ANDERSON, WHO KNEW THE TRIBES OPPOSED TO THE APPLICATION WERE SUBSTANTIAL CONTRIBUTORS AND WHO HAD LIMITED INVOLVEMENT IN THE MATTER, SIGNED A ONE AND A HALF PAGE LETTER DENYING THE APPLICATION**	**DENY**

EXHIBIT
C-104

Mr. BARR. Yet, on July 14, 1995, which is exhibit 328, the Department of the Interior does indeed disapprove the project, which is what the witness sought. Mr. O'Connor, I think your protestations of lack of influence are greatly exaggerated. Then, we have also, Mr. O'Connor, I believe, in exhibit 356–45 some activity, despite the fact that you believe that you have little influence in anything, on the very same day that the Department of the Interior went against at least five recommendations to approve, on that day they disapproved it, and you billed your clients additional moneys to outline fund-raising strategies.

Six days later, you also billed your clients to discuss fund-raising. Apparently, these discussions were also successful. You may believe that they were not, but apparently they were. Exhibit C–102 lists, I think, close to $360,000 of contributions that did then, indeed, come in from those very tribes who sought to disapprove—sought the disapproval of the Department of the Interior.

It seems obvious to me, as it did to a U.S. District Court judge, Mr. O'Connor, that there is indeed something here that is unusual. The tie-in between the DOI, that is, Department of the Interior disapproval in a matter that normally would be approved, and according to any number of other instances similarly situated, the Department did agree with its field offices and approve, in this case they did not, and their unusual action not in accord with their previous practices and not in accord with their lower offices immediately caused you to engage in fund-raising strategy discussions with Chairman Fowler of the DNC, Harold Ickes or at least your discussions regarding the, quote, "necessity to followup with Harold Ickes," raises the interesting question if you had absolutely no influence with him and you had no discussions with him, why it would be necessary to followup.

Clearly, there is at least an implication that the reason you felt it necessary to followup was to raise moneys that may, and I use the word "may," have been a quid pro quo for the unusual action by the Department of the Interior, which gave rise to the quote from Federal district court judge Barbara Crab, "There is considerable evidence that suggests that improper political pressure may have influenced agency decisionmaking." Your friends on the other side of the aisle may believe that findings such as that by the district court judge fall into the category of trivial pursuit. If they do, then the category of trivial pursuit is vast indeed, as I believe your influence is, despite your protestations to the contrary.

I do have one specific question, if I could, Mr. O'Connor. In exhibit 357–23, about which there was some discussion earlier, and this is your May 5, 1995, diary and work record, one of the few that your firm did furnish pursuant to a very broad subpoena that requested much, much more information, but on this one in particular about which we discussed earlier, also, there is a reference under a written No. 3 there to Hillary followed by a date and a number, of what appears to be thousands of dollars. What does that refer to, please, Mr. O'Connor?

Mr. O'CONNOR. Yes. That referred to a previous discussion that I had had with Terry McAuliffe about attending this May 18 luncheon, I believe, over at the headquarters of the Committee to Reelect.

Mr. BARR. What did that have to do with the Hudson Dog Track matter?

Mr. O'CONNOR. It had nothing—the Hudson Dog Track are the comments up in No. 2.

Mr. BARR. You can see on both of those pages there, there are substantial portions that are redacted. One presumes that the reason those are redacted is they have nothing to do with the Hudson Dog Track.

Mr. O'CONNOR. That's right.

Mr. BARR. The implication then being that we should draw from this material that is not redacted has to do with the Hudson Dog Track matter. Otherwise, it would have been redacted. Would that not be a reasonable presumption on our part?

Mr. O'CONNOR. I don't think so.

Mr. BARR. You don't think so?

Mr. O'CONNOR. No. These comments——

Mr. BARR. Then why were the other parts redacted?

Mr. O'CONNOR. The parts that were redacted were redacted because they dealt with other clients and other matters.

Mr. BARR. I thought you said that this did, also.

Mr. O'CONNOR. What?

Mr. BARR. You said that this, that this matter had nothing to do with the Hudson Dog Track matter, that is the reference to Hillary.

Mr. WAXMAN. Point of order, Mr. Chairman.

Mr. BURTON. The gentleman will finish this question and we will get on with Mr. Waxman.

Mr. BARR. You indicated, Mr. O'Connor, that is reference here, which is not redacted, the reference to Hillary, had nothing to do with the Hudson Dog Track.

Mr. O'CONNOR. That's correct.

Mr. BARR. OK. Other portions of your records that had nothing to do with the Hudson Dog Track have been redacted.

Mr. O'CONNOR. Yes.

Mr. BARR. My point is why should we not presume, then, since many other portions not having to do with the dog track issue were redacted, that these entries here, including the reference to the First Lady, did have something to do with the Hudson Dog Track?

Mr. O'CONNOR. All I can say to you about that, Congressman, is perhaps it should have been redacted, but it wasn't. Actually, this dealt with a fund-raising luncheon that Hillary Clinton was going to attend at the offices of the Committee to Re-elect, and that $5,000 figure, I believe, my recollection would be that either Hartigan or Terry said, if you want to attend that thing, see if you can get five contributions of $1,000 apiece from five sources. They didn't—it wasn't Indian sources. It was any source.

Mr. BURTON. Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman. Mr. O'Connor, you said you didn't talk to Vice President Gore, but you talked to his aides. Do you have any reason to think that Vice President Gore or his staff had anything to do with the denial of the Hudson Casino application?

Mr. O'CONNOR. None, that I know of. None.

Mr. WAXMAN. You wrote a letter on May 8 and a lot of people made a big to-do about this letter. This was a letter to Mr. Ickes

you said, who supported it, the application, who opposed the casino. Mr. Ickes didn't write this letter. You wrote the letter.

Mr. O'CONNOR. I wrote the letter.

Mr. WAXMAN. It's a very strange thing to me to hear people criticize Mr. Ickes and the White House for a letter they didn't write. This was a letter you wrote.

Mr. O'CONNOR. I stand behind this letter, Congressman.

Mr. WAXMAN. Well, that's your letter, so you ought to stand behind it. Do you know what Mr. Ickes' reaction was to the letter?

Mr. O'CONNOR. No.

Mr. WAXMAN. If it is a letter you wrote him, you stand behind it, but to make him have to stand behind the accuracy of your letter to him is a very peculiar notion. No one in the White House or the Department of Interior, for that matter, is responsible for you writing to them; are they?

Mr. O'CONNOR. No.

Mr. WAXMAN. Since the chairman made a very blanket statement, that Mr. McAuliffe contacted Mr. Ickes on behalf of your clients, we have contacted Mr. McAuliffe, and we are going to submit his affidavit to this committee record. He has told our staff that he didn't contact anybody; he didn't contact Mr. Ickes; he didn't contact anybody at the Department of Interior. I don't know whether he ever talked to Mr. Havenick, but Mr. Havenick said he talked to him. Maybe he did and maybe he didn't. His statement is he didn't influence the decision.

What is really involved is was there an improper influence in the decision by the Department of Interior. In fact, the people from the Department of Interior, including the young man who had the decision of power, who had gone to school with Mr. McAuliffe, said he hadn't talked to Mr. McAuliffe, none of them had talked to Mr. McAuliffe, so I just want that out there on the record, because it is so contrary to what the chairman said as an absolute statement of fact.

What we need are the facts, not innuendo, but the facts. And when we look at the facts, we find out that the decision was made by people who are career civil servants at the Department of Interior. And I will ask you again, do you have any reason to believe they made that decision on anything other than the merits?

Mr. O'CONNOR. I have no reason to believe that. Also, I never did get a report back from Mr. McAuliffe that he had made any call to Mr. Ickes.

Mr. WAXMAN. Well, today's testimony shows that there was political activity but no evidence of improper conduct at the Department of Interior, and, if anything, it is a good day for the White House, because when there was an attempt by you to influence them, they pretty much rejected it and said they weren't the person—the person who finally talked to you said they weren't going to talk to you because you were a lobbyist, so, if anything, the White House ought to be happy about this hearing. I don't know if that pleases the chairman, but the White House ought to be pleased about it.

I guess there are several truths that are coming out. We find that lobbyists sometimes take credit for things they didn't really do. We find that fund-raisers sometimes try to take credit for things they didn't do. And I am worried that the noose is tighten-

ing. Pretty soon they are going to find out that Members of Congress take credit for things that we didn't do. We certainly get blamed for some things we didn't do as well.

I thank you. You have been an excellent witness, very forthright. I appreciate your testimony. I think that you have given us a clear perspective that you did what you could as a lobbyist for your client, that what you did was what lobbyists do all the time, try to get your point of view across to the people that make the decision. And as far as you know, the people that actually made the decision may or may not have heard from those you were contacting, but they all say they hadn't heard from anybody.

Mr. O'CONNOR. I have no idea of who they talked with or what they did; I read their opinion.

Mr. WAXMAN. Well, Mr. Chairman, I yield back the balance of my time.

Mr. BURTON. Are you ready for questioning, Mr. Scarborough? Would you yield to me?

Mr. SCARBOROUGH. Yes, I will yield to you.

Mr. BURTON. Mr. Scarborough yields to me.

Mr. O'Connor may have been ignorant of the law regarding the White House exerting influence over the Department of Interior in this area, but the White House was not ignorant about that. When they got these letters and contacts from various individuals, they very clearly knew they shouldn't be interfering in the decision-making process over at the Department of Interior, and I think that is the major question.

Now you indicated there are no facts to back up if Mr. McAuliffe was involved or did anything. Mr. Havenick, this is a fact, Mr. Havenick said last week under oath before the committee, and there were some statements that accompanied it that were sworn under oath, that Mr. McAuliffe said to him in the presence of others that he killed the deal, meaning the dog track at Hudson, WI. You may not agree with that but it was a fact in sworn testimony before this committee last week. Mr. Havenick said that, and he stands by that statement.

Now I have a couple questions I want to ask you in closing here.

On July 14, 1995, and this is exhibit 334, if you can put that on the screen. On July 14, 1995, the Interior Department rejected the Wisconsin Chippewa's application for a casino in Hudson, WI. Over the next 18 months, Mr. O'Connor's clients and others contributed nearly $360,000 to the DNC.

On September 14, 1995, Patrick O'Connor and his partner, Larry Kitto, circulated a fund-raising letter to their Native American clients, who benefited from this decision, I might add, seeking contributions for a session with the President. And here is what Mr. O'Connor wrote in his letter: "As witnessed in the fight to stop the Hudson Dog Track proposal, the Office of the President can and will work on our behalf when asked to."

That is a pretty definitive statement. Very, very clear. When we

ask the Department or the Office of the President of the United States to help us out with something like the Hudson Dog Track matter, they will do it, and that is why you ought to kick in some money.

Now at least that is the way I look at it.

[Exhibit 334 follows:]

14 September 1995

Dear:

We personally would like to encourage you to attend the 1995 Presidential Reception for President William Jefferson Clinton and First Lady Hillary Rodham Clinton and dinner at the home of Vice-President and Mrs. Al Gore.

The first eight months of the Republican controlled Congress have been difficult times for tribes across the country. Unquestionably, tribal governments will need to call upon the Clinton administration, and the President himself, to assert leadership and assist tribes through the difficult 1996 budget process and to help fend off attacks on tribal gaming. As witnessed in the fight to stop the Hudson Dog Track proposal, the Office of the President can and will work on our behalf when asked to do so.

The 1995 Presidential Celebration will be held on:

Tuesday, September 26, 1995

The Omni Shoreham Hotel Ballroom
2500 Calvert Street, NW
Washington, D.C.
8:00 - 10:00 p.m.

The Vice-Presidential dinner will be held in late October, but the date has yet to be set.

PLEASE CALL 202-496-4870 TO RESERVE TICKETS

The cost of both events is $1,000. per person. Tribal checks are acceptable. All checks should be made out to Clinton/Gore '96. Please inform our office by contacting Larry Kitto at 612-488-4855 if you are able to attend. If you are unable to attend, but can contribute, please send your contribution to: Clinton/Gore '96, P.O. Box 19300, Washington, D. C. 20036-9300 Phone: 202-331-1996.

Thank you in advance for your participation and generosity.

Sincerely,

Larry Kitto

Pat O'Connor

K0000030

EXHIBIT
334

Mr. O'CONNOR. Can I comment?

Mr. BURTON. Can you tell me what you meant by that statement?

Mr. O'CONNOR. Certainly.

Mr. BURTON. Tell me.

Mr. O'CONNOR. First of all, I did not make that statement.

Mr. BURTON. It is not in your letter?

Mr. O'CONNOR. It is not in my writing; I never saw the memo when it went out.

Mr. BURTON. Who wrote the memo?

Mr. O'CONNOR. It was written by a Mr. Kitto.

Mr. BURTON. Mr. Kitto, your associate?

Mr. O'CONNOR. Mr. Kitto was one of the people in 1995 that was working on this issue, yes.

Mr. BURTON. Mr. Kitto and you were working on the issue and he was an associate working on it?

Mr. O'CONNOR. Yes.

Mr. BURTON. And your name is on the letter.

Mr. O'CONNOR. I did not put it there.

Mr. BURTON. Who did?

Mr. O'CONNOR. I assume Mr. Kitto did, but I never did.

Mr. BURTON. Did you ever discuss the dog track matter with Mr. Kitto?

Mr. O'CONNOR. I discussed that memo.

Mr. BURTON. Well, if you discussed this memo——

Mr. O'CONNOR. And he said that he had put my name on it.

Mr. BURTON. If you discussed it, you must have known the content of it.

Mr. O'CONNOR. It came up later when I was being deposed in the action pending in the Wisconsin State Court, and it came up at that time, and that is when I found out and first read it.

Mr. BURTON. And what did you say to Mr. Kitto at that time?

Mr. O'CONNOR. At that time, which was maybe a few months ago, I said, I don't recall ever signing or participating in that memo, and he said, You didn't. And I said, Well, my name is there. He said, Well, I put your name.

Mr. BURTON. Did he tell you why he put that name there without your permission?

Mr. O'CONNOR. No. No, he didn't.

Mr. BURTON. But you guys were in this together, all the way up and down the line, weren't you, in trying to get the casino stopped?

Mr. O'CONNOR. We worked together on this issue. I am only saying I did not participate in the drafting of that memo. I didn't know that it went out. I never read it until it was raised in the—when my deposition was being taken.

Mr. BURTON. Did you ask any of the Indian tribes for money after the fact, though, for the DNC or other Democratic causes?

Mr. O'CONNOR. Did I ask for any of the tribes for any money after the——

Mr. BURTON. Decision was made.

Mr. O'CONNOR. After the application was denied?

Mr. BURTON. Right.

Mr. O'CONNOR. I don't recall if I did or not, but I would say this: Mr. Kitto was the person who worked with the Indian tribes, not

me. Now whether or not on some particular event or issue I may have solicited some money, I don't believe so, but I may have.

Mr. BURTON. The St. Croix were your clients, though; were they not?

Mr. O'CONNOR. St. Croix was the client of the O'Connor & Hannan firm.

Mr. BURTON. And you were representing them.

Mr. O'CONNOR. I, as a contractual partner—not partner, I have a contract with them.

Mr. BURTON. The point is you were asking people all over Washington to help you out in getting access to Mr. Ickes. Obviously, you were representing them in trying to stop——

Mr. O'CONNOR. I am not saying I didn't participate in the representation, I certainly did, and I am proud of the fact that I did.

Mr. BURTON. But you had nothing to do with this letter saying we got the job done by going to the Office of the President and you ought to kick in some money?

Mr. O'CONNOR. I did not write that letter. I had nothing to do with it.

Mr. BURTON. But your associate did.

Mr. O'CONNOR. Mr. Kitto wrote it. He was not an associate of our firm at that time, but he was working on the same issue.

Mr. BURTON. I wonder on what basis he would make that kind of statement in writing if he didn't have your approval.

Mr. O'CONNOR. You are perfectly right to think whatever you want, but I am telling you he did not have my approval, and I did not participate in that memo at all.

Mr. LEEPER. Mr. Chairman, if I could say on behalf of my client——

Mr. BURTON. Just one final question. Do you think the letter was appropriate or inappropriate?

Mr. O'CONNOR. The Kitto letter?

Mr. BURTON. Yes, the one we are referring to.

Mr. O'CONNOR. I don't view it as being all that inappropriate. I wouldn't have written it.

Mr. BURTON. Thank you, Mr. O'Connor.

Mr. LEEPER. If I might say, Mr. Chairman——

Mr. BURTON. Counsel, you are not under oath. If you want to confer with your client, this has been a standing procedure of the committee, that legal counsel can confer with his client, but as far as addressing the committee on any relevant issue, he has to do it through his client.

Mr. LEEPER. Very well, Mr. Chairman. I was just going to offer some information about your reference to the law, but I will make that available. I will submit that to the committee in writing.

Mr. BURTON. That will be fine. Thank you.

Any other Members have any—Mr. Kanjorski, do you want to be recognized?

Mr. KANJORSKI. I will yield to Mr. Barrett.

Mr. BARRETT. I have a couple more procedural matters, if I could, Mr. Chairman.

Last week Mr. Havenick testified before this committee that Mr. Skibine, then-director of the Indian Gaming Management, told him and a group of tribal representatives that the Hudson application

was denied because of political interference. According to Mr. Havenick, Skibine said, "Look, don't blame me, we would have given it to you, it was the political people who turned it down."

Mr. Havenick also testified under oath that several of their people heard the comment, including Rose Gurnoe and Margaret Diamond. Mr. Skibine emphatically denied having said this. He testified that he recommended that the application be rejected. Mr. Skibine's recollection was corroborated by the affidavits of five Department of Interior officials, who were also at the meeting. Clearly, someone was mistaken.

Following our hearing, there was a story in the Wisconsin State Journal, and it sheds a little light on this issue. According to the story, at least two of the people Mr. Havenick claimed were at the Wisconsin meeting, Rose Gurnoe and Margaret Diamond told the reporter they were not there. The article in the paper actually also included Mr. Ackley, from the tribe, although my understanding is Mr. Ackley, in fact, was there.

So what I would ask, Mr. Chairman, is I would ask unanimous consent that the relevant excerpt of Mr. Havenick's testimony in the January 23, 1998, article from the Wisconsin State Journal be inserted in the record. Mr. Chairman, I made a unanimous consent request there.

Mr. BURTON. Without objection, so ordered.

[The information referred to follows:]

WI. State Journal 10/29/98

'Political' casino remark denied

Interior official says he wasn't pressured to reject Hudson plan

By Adam S. Marlin
States News Service

WASHINGTON — A career Interior Department official denied Thursday telling Wisconsin tribal leaders and a businessman that the decision to reject the Hudson casino proposal came from "political people."

George Skibine, director of Interior's Indian Gaming Management Office when the decision was made, said he based his recommendation on the plan's merits, and that he didn't remember suggesting otherwise.

"I made this recommendation based on the record before me," Skibine told the House Government Reform and Oversight Committee. "I was not pressured in any way by anyone to reach a particular recommendation in this matter."

The committee's investigation was prompted by allegations that the Interior Department's decision was influenced by politics. Republicans claim that a group of Minnesota-based tribes that feared competition from the Hudson casino applied political pressure by hiring a Democratic lobbyist and contributing more than $250,000 to the Democratic Party during the 1995-96 election cycle.

Skibine contradicted testimony on Wednesday from Fred Havenick, the Miami businessman who put together the casino plan with three bands of Wisconsin Chippewa Indians in an attempt to rescue his failing dog track operation in Hudson.

Havenick testified that during a December 1996 meeting, Skibine told the casino plan's backers, "Look, don't blame me. It was the political people who turned you down."

But in separate interviews, three Chippewa leaders contradicted Havenick. Rose Gurnoe, Arlyn Ackerly and Margaret Diamond — who, according to Havenick, witnessed Skibine's remarks — said they weren't at the meeting.

But a fourth, William Cadotte, said he was at the meeting and remembered Skibine's implication of "political people." Republicans on the committee provided affidavits supporting Havenick.

"It was something similar to that (what Havenick testified)," Cadotte said outside the hearing room. Cadotte said it was clear what Skibine meant pressure from inside the Interior Department and not from members of Congress.

The Justice Department is looking into the allegations of improper influence and is focusing Interior Secretary Bruce Babbitt's involvement in the decision. By Feb. 11, Attorney General Janet Reno must decide whether to appoint an independent counsel to investigate possible criminal actions.

Mr. BARRETT. Thank you.

One other request, if I could, Mr. Chairman. I received earlier today a letter from my constituent—not a constituent of mine, I should say a resident of Hudson, WI, a Mr. William Cramer, Ph.D. I don't know this man. It was to you. I don't know if it is the ordinary practice of the committee to include these in the record, and I have not really looked in depth at his letter, but I think it would make sense to have this included in the record as well. So I also ask unanimous consent that the letter from William H. Cramer, Ph.D., of Hudson, WI, dated January 26, be included in the record.

Mr. SOUDER. Reserving the right to object. I would like to see it.

Mr. BARRETT. We will get you a copy.

Mr. BURTON. Let's move on and we will hold that under the reservation.

Mr. BARRETT. Fine. And I yield back my time to Mr. Kanjorski.

Mr. BURTON. The gentleman yields back to Mr. Kanjorski, who yields back the balance of his time.

Who is next? Mr. Horn. Mr. Sununu.

Mr. SUNUNU. Good afternoon, Mr. O'Connor. On what day did you learn that the application had been rejected?

Mr. O'CONNOR. I believe that I heard that—pardon me, I am not talking into the microphone properly. I believe that I heard that either the afternoon of the 14th or the 15th. I was in Minneapolis, and one of my associates told me that the O'Connor & Hannan office had received a press release.

Mr. SUNUNU. Who was it that told you?

Mr. O'CONNOR. I believe it would have been Mr. Corcoran.

Mr. SUNUNU. Well, I would like to ask you about exhibit 385. This is a fax that was sent from Heather Sibbison to Councilwoman Benjamin, and it says in part, it asks the councilwoman to destroy, dispose of the old version of the rejection letter. So there was obviously a draft of the rejection letter prior to June 14th that apparently had been sent to your clients.

[Exhibit 385 follows:]

* 7/17/95 ATTN: MARY HARTMAN

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

TRANSMISSION NOTICE

DATE: July 14, 1995

URGENT

re: Hudson dogtrack

TRANSMISSION #: 202-208-4561

VERIFICATION #: 202-208-5617

FROM: Heather Sibbison

TO: Councilwoman Beverly Benjamin

AGENCY: St. Croix Tribal Council

FAX #: 715/349-5768

EXHIBIT 385

02912

NO. OF PAGES: (INCLUDING THIS PAGE) 2

COMMENTS: Councilwoman Benjamin:
Please find attached a corrected copy of John Duffy's letter to Chairman Taylor, responding to the Chairman's letter to Secretary Babbitt concerning the Hudson dogtrack. The attached version has the correct date (today) - the announcement was made this afternoon. If you would be so kind to dispose of the old version, we'd be most appreciative. Please do not hesitate to call me if I can answer any questions. Heather Sibbison

#105449

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 14 1995

Mr. Lewis Taylor
Tribal Chairman
St. Croix Tribal Council
P.O. Box 287
Hertel, Wisconsin 54845

Dear Chairman Taylor:

Thank you for your letter of June 1, 1995, in which you expressed the St. Croix Tribal Council's opposition to the application the three bands of the Chippewa Tribe (the Red Cliff Band of Lake Superior Chippewa Indians, the Sokoagan Chippewa Community of the Mole Lake Band, and the Lac Courte Oreilles Band of Lake Superior Chippewa Indians) to take into trust the St. Croix Meadows Greyhound Racetrack for gaming purposes.

In part, based on the opposition of the St. Croix Tribal Council, we have announced that the Department has decided to decline to exercise its discretion to take the dog track into trust.

I trust that this action by the Department addresses your concerns.

Sincerely,

John J. Duffy
Counselor to the Secretary

EXHIBIT
385-1

02913

Mr. SUNUNU. I guess my question—

Mr. LEEPER. We do not have exhibit 385 in our book.

Mr. BURTON. We will suspend just a moment. Can you get him exhibit 385 please, quickly?

Mr. SUNUNU. Clearly, from the exhibit, there is an indication that a draft of the finding, a draft of the rejection, was sent prior to July 14 to your clients, the St. Croix Tribal Council, as evidenced in this exhibit. My question would be, didn't your own client let you know that they had received an indication that a rejection had been written?

Mr. O'CONNOR. I have never seen either one of these documents I now hold in my hand, and my—as far as I can recollect, no client of ours, which would have been the St. Croix tribe, ever communicated this to me.

Mr. SUNUNU. So the tribe knew that it had been rejected prior to the 14th but they never bothered to inform you who were working on their behalf.

Mr. O'CONNOR. I am only saying I have not seen these, until today.

Mr. SUNUNU. I understand that you haven't seen this, but did they communicate to you that they knew in advance of the decision?

Mr. O'CONNOR. Anyone from the St. Croix?

Mr. SUNUNU. Anyone at all, communicate to you——

Mr. O'CONNOR. No one at all ever communicated to me in advance of the decision of the Interior.

Mr. SUNUNU. No one prior to the 14th?

Mr. O'CONNOR. No one prior to the 14th.

Mr. SUNUNU. On June 2, 1995, Tom Corcoran, your partner, billed 1½ hours for drafting a memo to Vice President Gore with regard to the Hudson Casino. We have not received a copy of this memo. Have you ever seen a copy of the memo being drafted to Vice President Gore about this issue?

Mr. O'CONNOR. I don't believe I ever saw it.

Mr. SUNUNU. Do you know what that memo dealt with?

Mr. O'CONNOR. No.

Mr. SUNUNU. Did it ask the Vice President to take any action?

Mr. O'CONNOR. Well, I never asked the Vice President to take any action, or communicate with him, either by phone or in writing.

Mr. SUNUNU. And you are not aware of any request that Mr. Corcoran may have included in this memo he drafted, and obviously billed time for?

Mr. O'CONNOR. No, and I find it strange that Mr. Corcoran—well, that is neither here nor there.

Mr. SUNUNU. I certainly find it strange that he would bill to draft this memo and then not be able to produce it for the committee.

I would like to ask you about the fund-raiser that you had on October 23, 1996, for the Vice President specifically. That was in Minneapolis, I believe, and we have a list of 20 attendees. Do you recall the event?

Mr. O'CONNOR. It was in October 1996?

Mr. SUNUNU. That is correct.

Mr. O'CONNOR. Of what date?

Mr. SUNUNU. October 23, 1996, a fund-raiser with approximately 20 attendees.

Mr. O'CONNOR. Approximately——

Mr. SUNUNU. With the Vice President.

Mr. O'CONNOR. Yes, in October, in Minneapolis. What is the significance of 2,800?

Mr. SUNUNU. October 23, 1996, there were approximately 20 attendees.

Mr. O'CONNOR. Twenty?

Mr. SUNUNU. Twenty.

Mr. O'CONNOR. Yes, I recall that.

Mr. SUNUNU. Is it true that approximately 14 of the 20 people at the fund-raiser were opponents of the casino project?

Mr. O'CONNOR. I'm not sure. I would have to look at the names of the people, but 14 out of 20 doesn't sound right to me.

Mr. SUNUNU. Well, the information that the committee has is that there were 14, and I would certainly ask the chairman to make a notation and verify that we have it correctly stated in the record that 14 of the attendees were opposed to the application; 7 in particular were from the Shakopee tribe.

Do you recall how much money was raised at that event?

Mr. O'CONNOR. Say that last sentence.

Mr. SUNUNU. Do you recall how much was raised at the event?

Mr. O'CONNOR. No, I don't recall offhand how much money was raised at that event. But it is a record with the Election Commission.

Mr. SUNUNU. Was the Hudson Dog Track proposal spoken about at the event?

Mr. O'CONNOR. No.

Mr. SUNUNU. Never came up in any conversation?

Mr. O'CONNOR. No, not in that event. Not with me.

Mr. SUNUNU. You talked earlier about a $50,000 goal that Mr. McAuliffe had set for you. When did he establish that as a fund-raising goal for you to raise that money with your tribal clients?

Mr. O'CONNOR. My recollection is that when McAuliffe met with me and Kitto, my recollection is that the purpose of the meeting was to discuss how much of a money—hard money, $1,000 a person, could be solicited or secured from Indians, not just our Indians, but Indians throughout the United States that Mr. Kitto has contact with.

Mr. SUNUNU. Mr. McAuliffe was aware you were working to try and kill the Hudson proposal?

Mr. O'CONNOR. Me?

Mr. SUNUNU. Yes.

Mr. O'CONNOR. Well, if I was killing it, I certainly didn't succeed in my efforts.

Mr. SUNUNU. To try and prevent the casino project.

Mr. O'CONNOR. Well, I never got to Ickes.

Mr. SUNUNU. But it wasn't killed. My point is Mr. McAuliffe was aware of your efforts.

Mr. O'CONNOR. McAuliffe was aware that I represented Indians that were opposed to the Hudson—the granting of that application, he was aware of that.

Mr. BURTON. The gentleman's time has expired.

Mr. SUNUNU. If I could ask you to clarify one statement you made. You said you never got to Ickes. Didn't you state earlier today, however, that Mr. Schneider, your partner, spoke specifically to you saying, "I did talk to Ickes and he said he was looking into it," that was your testimony earlier.

Mr. O'CONNOR. That is true.

Mr. SUNUNU. I would only make clear for the record that if one of your partners got to Ickes, and this group is a client of yours, then that in fact is getting to Mr. Ickes.

Thank you, Mr. Chairman.

Mr. BURTON. The gentleman's time has expired. Mrs. Maloney.

Mrs. MALONEY. Mr. Chairman, I yield my time to the ranking member.

Mr. WAXMAN. Thank you very much for yielding.

Mr. O'Connor, your lawyer wanted to tell us what the law was with respect to the White House contacting the Department of Interior. The chairman didn't want him to testify. Will you confer with your lawyer and tell us what your lawyer was going to tell us so we can get a clarification on that issue?

[Discussion off the record.]

Mr. O'CONNOR. I would say this, Congressman, there has been references made here about Judge Crabb's decision, and a lot of emphasis put on the fact and possibility that there may have been some implication of politics involved in this. I can say that Judge—the judge also said that it is perfectly proper for Members of Congress or for members of the executive branch, including the White House, to communicate with Interior. It is in that opinion.

Mr. WAXMAN. So, in other words, the blanket statement that it is against the law for the White House to communicate in any way its views on a matter to the Department of Interior is not a correct statement.

Mr. O'CONNOR. In my judgment, no, and the opinion of the Judge says that, a Federal judge in the Federal litigation that is pending against Interior, in Federal district court in Wisconsin.

Mr. WAXMAN. It may be a moot issue because we have no evidence that the White House contacted the Department of Interior, but to say that it is against the law for them to contact the Department of Interior is a big leap.

Now you were asked about a letter written by John J. Duffy, Counselor to the Secretary on stationery from the United States Department of Interior. You didn't write that letter, did you? There is a letter that—I think Mr. Sununu asked you about this. There is a letter to Lewis Taylor, tribal chairman, St. Croix Tribal Council, from John J. Duffy, Counselor to the Secretary.

Mr. O'CONNOR. To the Secretary?

Mr. WAXMAN. Right.

Mr. O'CONNOR. No, I wasn't privy to any of that.

Mr. WAXMAN. Now as I understand it from depositions, the person who did write this letter is Ms. Sibbison who works for the Department of Interior, and we asked that she be permitted to testify but we were refused the opportunity to hear her testimony. But in her deposition she said this letter was sent by mistake, I haven't heard any evidence to the contrary, but to ask you about a letter

that you didn't write, and then to try to attribute what is in this letter to you, is about as unfair as trying to attribute to Mr. Ickes a letter you wrote to him. I mean, it is almost like Alice in Wonderland, things don't have any connection.

It reminds me of the story of the man in New York who was standing with his stick and another man said to him, What is that stick for? And he said, This is an elephant stick. He said, An elephant stick, what does that mean? He said, Well, this is to keep elephants away. He said, How do you have a stick to keep elephants away? And he said, Well, do you see any elephants here?

When you have an issue where there are two sides, both heavily lobbying, one side is going to win and the other side is going to lose and somebody can say it is their elephant stick that did it, it was magic that did it, or they can try to take the credit, whether it was due or not. But if it didn't influence the decision that the Department of Interior actually made, without any political pressure, that is really—the facts speak for themselves, just like it is hard to believe the elephant stick really kept the elephants away.

I think the gentlelady from New York was yielding to me so we could get a clarification of the loose things being said around this hearing, so we know what we should hold you responsible for and what we should hold other people responsible for. Members of Congress have to be responsible for statements they make, hopefully made with some sense that there is a commitment to accuracy.

Mr. Chairman, do you want me to yield any of my time to you?

Mr. BURTON. Yes, I would be happy if you would yield a brief moment to me.

We stand corrected on whether or not it was the law, but we will stick by what we said earlier, that Ms. Avent and Mr. Schmidt, both in memos 304 and 305, said very clearly that it was political poison to get into this, No. 1, and No. 2, it was totally improper for them to be interfering with the processes over at the Department of the Interior.

Mr. WAXMAN. Now when Mr. O'Connor called Ms. Avent, she said, I don't want to talk to you, I don't talk to lobbyists. It sounds like they did what they were supposed to do.

Mr. BARRETT. Will the gentleman from California yield?

Mr. WAXMAN. Yes.

Mr. BARRETT. I just want to concur, in going back to that memo, I think it was political poison, and what we saw is, frankly, attempts made by both sides to continue to have influence on this, it wasn't just Mr. O'Connor, but as we know, others were trying to have an influence, and in the end, the correct decision was made, the people of Hudson, WI, and the people of St. Croix, WI, did not want a Las Vegas style casino foisted upon their community, and that was what the decision was and that was the correct decision.

Mr. BURTON. Mr. Souder has a consent——

Mr. SOUDER. I would like to come in on my reservation and ask a question. The letter appears to be very eloquent testimony against the casino, and I don't have any problems with that. My question is, the chairman had encouraged people to submit—who were here and didn't have a chance to talk, and late in this letter, he is particularly commenting on some testimony from other witnesses, and as long as the record shows there is a difference be-

tween depositions and sworn testimony and letters that people sent in, I don't have a problem with putting it in because I think it is a very heartfelt and well written letter, but there is a distinction between the witnesses under oath.

Mr. BARRETT. I would ask unanimous consent it be included and that it was a letter and it was not submitted under oath.

Mr. BURTON. Does that meet your concerns?

Mr. SOUDER. I withdraw my reservation.

Mr. BURTON. Without objection, so ordered.

[The letter referred to follows:]

WILLIAM H. H. CRANMER, PH. D.
511 Orange Street
Hudson, Wisconsin 54016

January 26, 1998

Chairman Dan Burton and Members
House Committee on Government Reform and Oversight
2157 Rayburn House Office Building
Washington, D. C.

Re: Hearings on the Hudson, Wisconsin, Casino Denial by the U. S. Department of Interior

Dear Chairman Burton,

My name is William Cranmer. I live at 511 Orange Street, Hudson, Wisconsin. I am a semi-retired professor of political science, and I have been a participant in, and a close observer of the Hudson community's fight against the Hudson dog track and the track/casino proposals for almost 10 years.

I have reviewed the Hudson casino application and all the documents in the Department of Interior's administrative record that are available to the public. I have examined all of the relevant documents in the Hudson, Troy and St. Croix County archives. I have observed many local governmental meetings at which the casino proposal was discussed. I have also read the U. S. Senate Governmental Affairs Committee's depositions of a number of participants in the Dept. of Interior denial of the Hudson casino application, now available in the Hudson City Hall.

As a result, I have developed strong opinions about the issue, and a firm knowledge base. I hope I may assist you in your search to understand this issue.

I am strongly against the Hudson casino proposal. I agree with all of the points made by Ms. Nancy Bieraugel at the January 21, 1998, hearing.

I would like, however, to discuss several additional points that were given too little time during previous hearings, or were presented in a distorted fashion.

THE SPREAD OF CASINOS TO CITIES NATIONWIDE

If the Hudson casino were approved by the Department of Interior, then so-called Indian casinos would probably spread to all cities nationwide. In principle, the only "firewalls" preventing the uncontrolled spread of casinos are the very barriers erected by the Department of Interior in its 1995 decision against the Hudson proposal.

Firewall Number One: "Indian Gaming." The passage of the 1988 Indian Gaming Regulatory Act was intended to benefit Native Americans, not others. As the House Committee has heard from the tribes themselves, however, the Hudson proposal was created, developed, and has been almost entirely funded by the non-Indian Florida owners of the Hudson dog track. According to the casino agreements between the partners, the Florida family funding the casino would be inextricably tied into the casino for the next 25 years, and would benefit from 25% of the profits.

A new and very dubious precedent is set by the Hudson proposal. The only apparent difference between this proposal and a straight commercial gambling investment is that this enterprise would evade existing state laws against non-Indian casino gambling, and would evade state laws regulating ordinary commercial enterprises, including those requiring property tax payment. The Department of Interior labelled the Four Feathers Casino agreements as "management agreements," but the briefest examination shows that they are "joint ownership agreements," not management agreements.

Department of Interior officials have told the Committee that the Hudson proposal was not "in the best interest of the tribes," because of the one-sided nature and rapacious quality of the agreements. If the Hudson proposal is approved, non-Indian ownership will probably become a standard feature of "Indian" casinos nationwide.

Firewall Number 2: Distance. As the Committee has heard, the tribal reservation of the nearest applicant is located about 100 miles away from Hudson. The furthest applicant's reservation is almost 200 miles away.

According to the Department of Interior, the Hudson proposal to put land in trust so far from reservations is highly unusual. In his deposition before the Senate Governmental Affairs Committee, Deputy Assistant Secretary of Interior Michael Anderson commented that this factor of distance was the first point about the Hudson proposal that galvanized him against it. He suggested it might permit a proposal by an Oklahoma tribe to place a casino in New York City.

If the Department of Interior were to relax its general rule that "land in trust acquisitions" should be on or near current reservation land, then there is no obvious reason why all Oklahoma or Wisconsin tribes should not close their current casinos, and apply for casinos in New York, Dallas or Denver. Such applications in major metropolitan areas would make good economic sense for all tribes, whether "poor" or "rich."

Firewall Number 3: Community Assent. Interior Secretary Babbitt commented in his testimony before the Senate Governmental Affairs Committee that he felt that the Federal Government should

not cram a casino down the throat of an unwilling community. Community opposition was a significant reason for Interior's July 14, 1995, denial of the Hudson casino application.

As much testimony and documentation before the Committee attests, the "surrounding communities" around the proposed casino site (the City of Hudson and the Town of Troy) could not be much more unwilling to accept a casino than they are. Likewise, the State of Wisconsin, by its current Constitution and 1993 referenda, could not be a much more unwilling State for more gambling.

If the clear preferences of Hudson and Troy, and the position of the State of Wisconsin on expanded gambling were to be ignored by the Department of Interior, then no community in the United States could prevent an "Indian" casino being forced on it by the Federal Government. Only state Governors, with all the potential for corruption that that implies, could stand in the way.

I remind you that Wisconsin Racing Board Chairman David C. Mebane said in 1992:

> "All of the people in this business are extremely greedy and they want more and more and more all of the time...The gambling industry and gambling proponents have an insatiable desire to corrupt every public office holder they come in contact with." (Milwaukee Sentinel, May 26, 1992)

Firewall Number 4: Objections from Nearby Tribes. Deputy Assistant Secretary Michael Anderson said in his July 14, 1995, decision on the Hudson case that the St. Croix Chippewa tribe's objection was one of the grounds for his denial of the Hudson application. Actually, all the surrounding tribes around Hudson objected to the proposal, including the St. Croix and Ho Chunk tribes in Wisconsin, and the Shakopee and Prairie Island Sioux tribes in Minnesota.

The Hudson casino applicants have made much of the "anti-competitive" nature of the objections of other tribes with casinos near Hudson.

But this is 100% hypocrisy. If the Hudson casino application were to be approved to promote competition, then there would be no stopping point. Every tribe in Minnesota or Wisconsin or elsewhere could apply for casinos within the Twin Cities. The economic assumptions on which the Hudson application is based would then evaporate. The applicants would be left with a commercial failure as big as the current Hudson dog track, and a debt at least as big as the one now owed by the track, unless they were able to secure their own regional monopoly from the Federal Government. I expect the owners of a Hudson casino would suddenly become "anticompetitive" themselves.

The general point is that if all four of these firewalls erected by the Department of Interior in the Hudson case are now destroyed by court or Congressional action, no community or state in the United States would be able to control so-called "Indian" gambling. And if the Hudson precedent is approved, all four firewalls would be destroyed.

Clearly this would lead to exactly the type of political rebellion against Indian gambling and the IGRA that Department of Interior officials envisioned during their Hudson casino deliberations. Thus, the Department of Interior's decision to reject the casino makes very good sense.

DETRIMENT TO THE SURROUNDING COMMUNITY

The applicants have said that the administrative record of the Hudson casino process never identified an obvious "detriment" to the "surrounding community," in the language of the IGRA.

Leaving aside the contentious debate about a definition of "detriment," and the equally unclear legal debate about whether it is up to the local community to prove "detriment," or the applicants to prove "lack of detriment," on the simple basis of the administrative record there is plenty of discussion and evidence about obvious detriments to the community. The Town of Troy singled out a number of areas it was concerned about, and so did St. Croix County and the City of Hudson. I submitted about 200 or more pages on these questions myself, and so did a prominent attorney in the Hudson area, during the environmental hearing process. These are all in the administrative record, along with factual exhibits.

The problem was not lack of identifiable detriment, but a degree of deliberate blindness by BIA staff in Ashland, Wisconsin, and Minneapolis, Minnesota, during the approval process. Many points in the record were simply ignored or assumed away by the BIA staff. The local BIA staff placed touching faith in untenable assertions by the applicants, rather than relying on cold analysis of empirical evidence, or undertaking "due diligence" investigations.

Fortunately, Edward Slagle, the environmental specialist on the Indian Gaming Management Staff (IGMS) in Washington blew the whistle on the applicants' assertions. His brutal appraisal of the inadequacy of the Hudson casino Environmental Assessment is available in the January, 1995, IGMS Findings of Fact, pp. 15-16:

> "The environmental impacts of this proposed project are analyzed insufficiently, and the plans for the reduction and mitigation of adverse impacts are insufficient. The Environmental Assessment (EA) of this action is largely irrelevant because the existing conditions are inadequately

described. The EA is seven years old, for a different proposed project, and for an environment that has changed drastically during the intervening years."

In addition, I filed a similar assessment of the inadequacies of the local BIA environmental approval process with the IGMS in February, 1995.

I was therefore amazed to find Thomas Hartman's June 8, 1995, report to the IGMS recognized none of the critical points about "detriments" to the local community that are in the record. Mr. Hartman found "no detriment" simply because he ignored all evidence of detriment, including the possible detriments identified by Mr. Slagle. In the appalling glory of his peculiar report, Mr. Hartman dismissed all environmental detriments to the Hudson area by saying that since no appeal of the local BIA office's "Finding of No Significant [Environmental] Impact" had been filed by a member of the public, no environmental detriments must in fact exist.

Considering that Mr. Hartman and the rest of the IGMS knew by June 8 that the Hudson sewage treatment plant was inadequate to deal with the probable volume of casino wastewater, I find Mr. Hartman's report exceedingly strange, and his attitude toward his job, and real people out in the real world genuinely perplexing.

LACK OF CASINO SUPPORT BY ST. CROIX COUNTY

Mr. Fred Havenick errs alarmingly in his prepared statement before the Commmittee on Jan. 21. On p. 4, Mr. Havenick says that, "The St. Croix County Board of Supervisors overwhelmingly supported our [casino] proposal in 1994..."

In fact during 1994 the County Board of Supervisors only voted to ratify the City-County-Casino "Agreement for Government Services," which took no stand at all on the casino proposal. The County refused to take a stand in favor of the casino proposal in 1994.

The County affirmed this absence of support on March 14, 1995, in replying to a letter from the Sokoagon Chippewa Community. County Board Chair Robert Boche said, "The County has never supported the gaming facility. The Agreement for Government Services is not an endorsement of the gaming facility."

Concerning "detriment" to the community, the County placed itself in the "Don't Know" column. In an April 15, 1994, letter to the BIA, County Board Chair Richard Peterson said,

"Based on the limited information provided to us by the Tribes and the Bureau of Indian Affairs regarding the nature and extent of the proposed casino's operations, we can not

> conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community."

This again is directly contrary to Mr. Havenick's assertions on p. 5 of his statement.

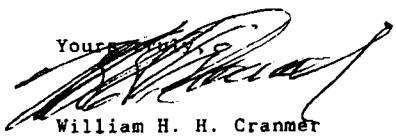
I believe all of these documents are in the administrative record, or have been supplied to the Committee.

These are a few points that should be made during the hearings. There are many more inaccuracies and omissions in the applicants' statements, but I believe I have taken enough of the Committee's time and attention.

The important points to remember are that this application was soundly rebuffed by the surrounding community, by State and Federal elected officials, and by other nearby tribal communities during the consultation process, as the IGRA specifies. The principles invoked by the Department of Interior in the denial of the application also seem to me to be highly appropriate if gambling is to be controlled in this country.

Thank you.

Yours truly,



William H. H. Cranmer

RPTS STRICKLAND
DCMN GALLACHER

THE DEPARTMENT OF THE INTERIOR'S DENIAL OF THE WISCONSIN CHIPPEWA'S CASINO APPLICATIONS

Wednesday, January 21, 1998

House of Representatives,
Committee on Government Reform
and Oversight,
Washington, D.C.

The committee met, pursuant to call, at 10:20 a.m., in Room 2154, Rayburn House Office Building, Hon. Dan Burton [chairman of the committee] presiding.

Present: Representatives Burton, Hastert, Morella, Cox, Mica, Davis of Virginia, Souder, Sununu, Pappas, Snowbarger, Waxman, Lantos, Kanjorski, Barrett, Norton, Fattah, Cummings and Kucinich.

Staff Present: Kevin Binger, Staff Director; Richard Bennett, Chief Counsel; Judith McCoy, Chief Clerk; Teresa Austin, Assistant Clerk/Calendar Clerk; William Moschella, Deputy Counsel and Parliamentarian; Will Dwyer, Director of

I told Terry that was my project and I was the one who owns the track in Hudson. His face dropped. He was clearly in shock and said little else.

The second incident took place on December 3rd, 1996, at the reservation of one of our partners, the--

Mr. COX [presiding]. I am sorry, Mr. Havenick. Could I interrupt you? What was the date of that conversation?

Mr. HAVENICK. August 15th, 1995.

Mr. COX. Thank you.

Mr. HAVENICK. The second incident took place on December 3rd, 1996, at the reservation of one of our partners, the La Courte Oreilles in Wisconsin. There was a meeting attended by all three partners, myself, and officials of the BIA, including George Skibine. During the meeting, there was much complaining about the turndown of the Hudson casino application. Finally, Mr. Skibine said, look, don't blame me; we would have given it to you; it was the political people who turned it down.

I am the main reason we are all sitting here today discussing the Hudson casino. I was the one who absorbed Mr. Eckstein's costs that led to Mr. Babbitt's damning statements. And after the rejection, I funded the lawsuit that uncovered the evidence of political improprieties in the decision. I believe I was the factor never considered by Heather Sibbison when she told the White House in a moment of

Department of Justice.

Mr. WILSON. Thank you.

Now, I'd like to follow up a little bit with the meeting that you mentioned that took place at the La Courte Oreilles Reservation in Wisconsin. It was a meeting in your opening statement that you indicated George Skibine attended. Do you recall what the purpose of that meeting was?

Mr. HAVENICK. Yes. The purpose of that meeting was to go over ways in which we could correct the situation on our application. It was to go over a review of where we were in the application process, even though it had been turned down.

Mr. WILSON. And is it fair to say you were there to participate in that review of the Hudson dog track application to that point?

Mr. HAVENICK. Yes, it is.

Mr. WILSON. How--how did the subject of the Hudson dog track rejection come up at that meeting?

Mr. HAVENICK. The meeting was--was held in the bingo hall of the La Courte Oreilles, which is a fairly large room, and there were a number of questions that were asked. But the main question that was on the minds of both the three tribes and myself was what happened in Hudson, and it just naturally came up among the first questions that were asked.

Mr. WILSON. And was that a question asked directly of Mr. Skibine?

Mr. HAVENICK. Yes, it was.

Mr. WILSON. And what did Mr. Skibine say when he was asked what happened with the application?

Mr. HAVENICK. At first Mr. Skibine started answering the question in political terms, but when he was pressed after about the third or fourth question, he said it was kind of a mea culpa. He said, listen, we would have approved it or we approved it. When it got upstairs, politics took over.

So I got the impression that he was trying to justify to the tribes that he was not the person who was involved in the final decision, because I had always felt that he was in favor of this decision, that he was extremely sympathetic to the plight of the tribes.

Mr. WILSON. So knowing what you knew about Mr. Skibine's involvement, did he appear--when he finally gave an explanation, did he appear to mean what he said?

Mr. HAVENICK. Yes.

Mr. BURTON [presiding]. Would counsel let me interrupt just for a moment?

Were there other witnesses there when Mr. Skibine said that?

Mr. HAVENICK. Yes, there were.

Mr. BURTON. Could you enumerate or give us the names of some of the people that were there?

Mr. HAVENICK. Yes, Rose Gurnoe from the Red Cliff Tribe

was there. Chairman Ackley was there. Bill Cadot from the La Courte Oreilles was there. Margaret Diamond from La Courte Oreilles was there. Al Tripanyea from La Courte Oreilles was there. And there were probably another 10 people from the tribes--at least 10 people who were there. And there were also people from the--from the Bureau of Indian Affairs who were there.

Mr. BURTON. We may not have all of those names. I'd like for you, to the best of your knowledge, give us a list of those, because we are going to have not only you under oath but Mr. Skibine and others, and we want to make sure that we get the correct answers on these questions.

And, once again, you say that he said that he was--he was in favor of it, but it was kicked upstairs and it was turned down by people upstairs because of political pressure, or words to that effect?

Mr. HAVENICK. We were not against the proposal; we were in favor of it. It was when it got upstairs that politics took over.

Mr. BURTON. Okay. Thank you.

Mr. WILSON. Were you surprised by Mr. Skibine's answer?

Mr. HAVENICK. No. Actually, I had really always thought that Mr. Skibine was very sensitive to the needs of the tribes and sympathetic to the project.

Almost everyone we had met at the Bureau of Indian

January 23, 1998, Friday, ALL EDITIONS

SECTION: Front, Pg. 3A

LENGTH: 395 words

HEADLINE: 'POLITICAL' CASINO REMARK DENIED ; INTERIOR OFFICIAL SAYS HE WASN'T PRESSURED TO REJECT HUDSON PLAN

BYLINE: Adam S. Marlin States News Service

DATELINE: WASHINGTON

BODY:

A career Interior Department official denied Thursday telling Wisconsin tribal leaders and a businessman that the decision to reject the Hudson casino proposal came from ''political people.''

George Skibine, director of Interior's Indian Gaming Management Office when the decision was made, said he based his recommendation on the plan's merits, and that he didn't remember suggesting otherwise.

''I made this recommendation based on the record before me,'' Skibine told the House Government Reform and Oversight Committee. ''I was not pressured in any way by anyone to reach a particular recommendation in this matter.''

The committee's investigation was prompted by allegations that the Interior Department's decision was influenced by politics. Republicans claim that a group of Minnesota-based tribes that feared competition from the Hudson casino applied political pressure by hiring a Democratic lobbyist and contributing more than $ 250,000 to the Democratic Party during the 1995-96 election cycle.

Skibine contradicted testimony on Wednesday from Fred Havenick, the Miami businessman who put together the casino plan with three bands of Wisconsin Chippewa Indians in an attempt to rescue his failing dog track operation in Hudson.

Havenick testified that during a December 1996 meeting, Skibine told the casino plan's backers, ''Look, don't blame me. It was the political people who turned you down.''

But in separate interviews, three Chippewa leaders contradicted Havenick. Rose Gurnoe, Arlyn Ackerly and Margaret Diamond -- who, according to Havenick, witnessed Skibine's remarks -- said they weren't at the meeting.

But a fourth, William Cadotte, said he was at the meeting and remembered Skibine's implication of ''political people.'' Republicans on the committee provided affidavits supporting Havenick.

''It was something similar to that (what Havenick testified),'' Cadotte said outside the hearing room. Cadotte said it was clear what Skibine meant pressure from inside the Interior Department and not from members of Congress.

Wisconsin State Journal, January 23, 1998

The Justice Department is looking into the allegations of improper influence and is focusing Interior Secretary Bruce Babbitt's involvement in the decision. By Feb. 11, Attorney General Janet Reno must decide whether to appoint an independent counsel to investigate possible criminal actions.

LOAD-DATE: January 24, 1998

Mr. BURTON. Mr. O'Connor, you have been a very patient witness and you have acquitted yourself well, although we may have some disagreements, and your counsel has been very patient. We appreciate your being with us today. Thank you, you are excused. We will get to the next panel in just one moment. Thank you, sir.

Mr. O'CONNOR. Thank you, Mr. Chairman.

Mr. BURTON. Earlier today I offered a unanimous consent to release all documents relating to the St. Croix Meadows Greyhound Race Park to be made publicly available. I did this because the committee will wrap up the hearings in this matter tomorrow and the public has a right to know the entire story. The Department of the Interior has raised some objections and we are accommodating the Department on two out of three of their concerns. Because of this, the minority has agreed not to request a recorded vote but has demanded the question be placed before the committee in the form of a motion, and not a unanimous consent request. With that understanding, I have a motion at the desk and ask unanimous consent that the motion be considered as read, and I recognize myself for 5 minutes in support of the motion.

The Department of the Interior has said that some documents may be subject to the attorney-client privilege. Secretary Babbitt has not asserted the privilege, however. It is my judgment that privilege does not apply. Furthermore, these e-mails and letters concern the issue of whether there was detriment to the community, an issue that was the subject of our hearings last week. I believe the public has a right to know this information and balance for themselves whether the decision to deny the application was on the merits or not.

I now recognize Mr. Waxman for a brief statement.

Mr. WAXMAN. I want to speak in opposition to this motion. The Interior Department is a party to a Federal lawsuit in Wisconsin on the Hudson Casino issue. In that lawsuit, the Department withheld some documents written by its attorneys on grounds that they are subject to attorney-client privilege. They also withheld some documents prepared in anticipation of litigation on grounds of a work product doctrine.

Although the Interior Department has withheld these documents from its opponents in the Wisconsin lawsuit, it produced them to the committee with the expectation that the committee would consult with them before releasing the documents to the public. It is our understanding, based on the representation of the Interior Department, that the majority intends to release these documents without any consultation. The question of whether the attorney-client privilege or work product doctrine is one that will require close scrutiny of the author, recipient, and content of each document. The Interior Department should have an opportunity to present its views on whether any of these documents are legitimately privileged or protected attorney work product.

The majority apparently takes the position that its release of documents will not affect the Department's claim of privilege in the Wisconsin lawsuit, but this is an open legal question that the Department will likely have to litigate. The Department's claim of privilege and work product are matters that Judge Crabb can and ultimately will decide in the Wisconsin lawsuit. There is no reason

the committee should interfere with the litigation and no reason why, at the very least, the committee cannot sit down with Interior Department officials and attempt to resolve this issue amicably, and for that reason we oppose the chairman's proposal to make these documents part of the record and make them public.

We recognize the fact that this would probably be a party line vote, and the chairman has more Republicans to vote with him than we have Democrats to vote with me, in opposition, so rather than inconvenience all the Members and make them come here and cast a recorded vote, I will accept the chairman's verdict that he will win on a voice vote, even though as I look around the room at the moment, we probably have more votes on our side, but the chairman will presumably call this as a victory for those who want the motion and we will accept that result, but I am registering my opposition. I yield back the balance of my time.

Mr. BURTON. The gentleman yields back the balance of his time.

The question is on the motion. All those in favor will signify by saying aye.

Those opposed, signify by saying no.

In the opinion of the Chair, as you suggested, the ayes have it and the motion is carried.

I would now invite the second panel, Mr. Tom Collier and John Duffy, to approach the witness table.

Mr. KANJORSKI. I was just going to make the observation that apparently the elephant stick worked in this case.

Mr. BURTON. I am glad you still have your sense of humor after this long day.

Mr. BURTON. Mr. Collier and Mr. Duffy, please stand and raise your right hands, please.

[Witnesses sworn.]

Mr. BURTON. You are welcome to make an opening statement, each of you, if you so choose. We would like, if you could, to confine it to a 5-minute period. If it is longer than that, we will be happy to submit the rest for the record. Mr. Duffy.

Mr. DUFFY. I have an opening statement. Is my microphone on?

Mr. BURTON. I believe your microphone is on. You might want to pull it closer.

Mr. DUFFY. How is that?

Mr. BURTON. You may need to pull them closer. Those don't pick up as well as the mics up here.

STATEMENTS OF JOHN J. DUFFY, ATTORNEY, STEPTOE AND JOHNSON; AND THOMAS C. COLLIER, ATTORNEY, STEPTOE AND JOHNSON

Mr. DUFFY. Thank you, Mr. Chairman.

Mr. Chairman, members of the committee, my name is John J. Duffy. I am currently an attorney in private practice in Washington, DC, at the law firm of Steptoe and Johnson. I served as Counselor to Secretary of the Interior Bruce Babbitt from late 1993 until my departure in July 1996. While I served in that position, I had some involvement with the Hudson Dog Track Casino application. There are several points that I would like to make about the application and about my recollection of the process that it took.

First, neither I nor anyone else to my knowledge was instructed by the White House to deny the application. I had no contact with anyone at the White House about the matter. I understand that my assistant, Ms. Sibbison, spoke with Jennifer O'Connor in Mr. Ickes office and assisted in responding to correspondence from Congress about the application. I had no information that any of the tribes were contributors to either party, if in fact they were.

Mr. BURTON. Excuse me, Mr. Duffy, if you can pull the mic directly in front of you a little closer, I don't know if Mr. Kanjorski hears you as well as he should. You need to pull it up close to you, as close as you can or move closer to the table or whatever.

Mr. DUFFY. Is that better?

Mr. BURTON. That is a lot better.

Mr. DUFFY. OK.

Second, the decision to deny the Hudson application was clearly correct. The Indian Gaming Regulatory Act, which Congress passed in 1988, makes it clear that Congress did not intend to authorize Indian gaming on land acquired by tribes far from their existing reservations, except in very rare circumstances. I have appended the relevant statutory section to my statement. If tribes could easily open casino-type gaming facilities on land that they or others purchased far from their existing lands, the purposes of IGRA would be subverted. One of the purposes of IGRA was to limit Indian gaming to existing Indian land. Off-reservation gaming by an Indian tribe was intended by Congress to be a rare event. The Department did not believe that an application prepared by a Florida-based company on behalf of three tribes in Wisconsin for gaming off their existing reservations, and right in the middle of communities which opposed it, qualified for this exception.

Third, I believed, and I said so, that the decision denying the application should address its compliance with the Indian Gaming Regulatory Act. It was, after all, an application to take land into trust for gaming. I felt the Department should be clear that in our view the application did not meet IGRA's statutory requirements for an exception. I believed then, and I believe now, that it was important for the Department to articulate its views on the requirements for the exception. I also thought it important that the decision explain the importance which the Department gave to local opposition to off-reservation gaming by a tribe.

In conclusion, I do not believe that it was the intent of Congress in enacting IGRA to permit Indian gaming off existing reservations under circumstances like this one. The notion that the decision was made because of any political affiliation or donation is simply incorrect.

Thank you very much.

Mr. BURTON. Thank you, Mr. Duffy.

[The prepared statement of Mr. Duffy follows:]

STATEMENT OF JOHN J. DUFFY

Mr. Chairman, Members of the Committee, my name is John J. Duffy. I am currently an attorney in private practice in Washington, DC, at the firm of Steptoe and Johnson. I served as Counselor to Secretary of the Interior Bruce Babbitt from late 1993 until my departure in July, 1996. I had some involvement with the Hudson Dog Track Casino application. There are several points that I would like to make about the application and my recollection of the process that it took.

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Second, the decision to deny the Hudson application was clearly correct. The Indian Gaming Reform Act ("IGRA"), which Congress passed in 1988, makes it clear that Congress did not intend to authorize Indian gaming on land acquired by tribes far from their existing reservations except in very rare circumstances. I have appended the relevant statutory section to my statement. If tribes could easily open casino-type gaming facilities in locations distant from and having no contact with their existing lands, the purposes of IGRA – to provide for and limit Indian gaming on Indian land – could be subverted. Off-reservation gaming by an

Indian tribe was intended by Congress to be a rare event. The Department did not believe that an application prepared by a Florida-based company for three tribes in Wisconsin for gaming off their reservations and right in the middle of existing non-native communities which opposed it qualified for the exception.

Third, I believed, and I said so, that the decision denying the application should address its compliance with the Indian Gaming Reform Act. It was, after all, an application to take land into trust for gaming. I felt the Department should be clear that in our view the application did not meet IGRA's statutory requirements for an exception. I believed then, and I believe now, that it was important for the Department to articulate its views on the requirements for the exception. I also thought it important that the decision explain the importance which the Department gave to local opposition to off-reservation gaming by a tribe.

The application was being reviewed in the Office of Indian Gaming at BIA when I was asked to attend a meeting on February 8th in Congressman Oberstar's office. I understood that several congressmen opposed to the application had asked to see the Secretary, and the Secretary requested that I represent him at that meeting. George Skibine accompanied me to that meeting. A number of congressmen from both parties, staff members, and representatives of various affected tribes and local communities were present. They were concerned that it might be decided without input from the local community and neighboring tribes, and they requested that they be permitted to present materials to the Department of the

Interior in opposition to the application. I assured them that the Department would receive the materials and consider their views in deciding the application.

I believe that a number of persons and entities did submit materials to Mr. Skibine and his staff and that his office reviewed those materials in due course.

I spoke with George Skibine and Michael Anderson about the application in the weeks leading up to the July 14th decision. A consensus did emerge that it should be denied. I recall expressing my views on two questions: first, whether the Assistant Secretary for Indian Affairs or the Deputy Commissioner of the Bureau of Indian Affairs should sign the letter denying the application; and second, whether the decision denying it should address its failure to comply with Section 20 of the Indian Gaming Reform Act, as well as the more general provision relating to trust land applications. I believed that the Assistant Secretary should sign the denial letter and that the Department should rest its denial on both statutory grounds.

During those conversations, I am sure that I expressed what I knew to be Secretary Babbitt's view that off-reservation gaming facilities should not be "shoved down the throats" of local communities.

In conclusion, I do not believe that it was the intent of Congress in enacting the Indian Gaming Reform Act to permit Indian gaming off existing reservations under circumstances like this one. The notion that the decision was made because of any political affiliation or donation is simply not correct.

* * * * *

D:\ATTORNEY\WWT\DUFFY\DUFFY.STM

§ 2719. Gaming on lands acquired after October 17, 1988

(a) Prohibition on lands acquired in trust by Secretary

Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless—

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

(2) the Indian tribe has no reservation on October 17, 1988, and—

(A) such lands are located in Oklahoma and—

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) Exceptions

(1) Subsection (a) of this section will not apply when—

(A) the Secretary, after consultation with the Indian tribe and appropriate State, and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(B) lands are taken into trust as part of—

(i) a settlement of a land claim,

(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

(2) Subsection (a) of this section shall not apply to—

(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86-2278, or

(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B) and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under sections 465 and 467 of this title, subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

(c) Authority of Secretary not affected

Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d) **Application of Internal Revenue Code of 1986**

(1) The provisions of the Internal Revenue Code of 1986 (including sections 1441, 3402(q), 6041, and 6050I, and chapter 35 of such Code) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal–State compact entered into under section 2710(d)(3) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.

(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after October 17, 1988, unless such other provision of law specifically cites this subsection.

(Pub.L. 100–497, § 20, Oct. 17, 1988, 102 Stat. 2485.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in subsecs. (a) and (d)(1), was in the original "this Act", meaning Pub.L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which enacted this chapter and sections 1166, 1167, and 1168 of Title 18, Crimes and Criminal Procedure. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (d)(1), is classified generally to Title 26.

Legislative History

For legislative history and purpose of Pub.L. 100–497, see 1988 U.S.Code and Cong. and Adm. News, p. 3071.

LIBRARY REFERENCES

Indians ⇐32(12).
C.J.S. Indians § 64.
WESTLAW Topic No. 209.

NOTES OF DECISIONS

1. Tribal-state compacts

Tribal-state compact between Keweenaw Bay Indian Community and state of Michigan authorized class III gaming activity conducted on land purchased and placed in trust for benefit of Tribe three years before compact was signed; subsection of compact requiring Tribe to submit to requirement of section of Indian Gaming Regulatory Act (IGRA) prohibiting such gaming without approval from Secretary and concurrence of governor, which applied to "land which the Tribe proposes to be taken into trust by the United States for purposes of locating a gaming establishment thereon," did not apply as parcel of land on which the gaming was conducted was already held in trust for Tribe. Keweenaw Bay Indian Community v. U.S., W.D.Mich.1996, 914 F.Supp. 1496, reconsideration denied.

Governor had authority to enter into negotiations with Indian tribe for tribal-state compact under Indian Gaming Regulatory Act, but had no power to bind state to terms thereof absent appropriate delegation of power by state legislature or legislative approval of compact. State ex rel. Stephan v. Finney, Kan.1992, 836 P.2d 1169, 251 Kan. 559.

2. State regulation or control

Provision of Indian Gaming Regulatory Act (IGRA) authorizing Secretary of Department of Interior (DOI) to take off-reservation land into trust for specific purpose of establishing gaming operation subject to governor's concurrence did not infringe on state's legislative power and, thus, did not violate Tenth Amendment, in light of fact that all of burdens under statute fell on DOI with governor able to exert independent power on behalf of state even by inaction. Confederated Tribes of Siletz Indians of Oregon v. U.S., D.Or.1994, 841 F.Supp. 1479.

3. Investigation by Internal Revenue Service

Seeking to tax Indian tribes and all other taxable entities to extent allowed by law was proper and legitimate purpose supporting investigation by Internal Revenue Service (IRS) into tax liabilities of Fond du Lac Reservation Business Committee for wagering excise taxes, notwithstanding Committee's interpretation of section of IGRA as excepting pulltab operations of Indian tribal government from federal excise tax on wagering; investigation was founded upon formal revenue ruling which reached opposite conclusion and, therefore, crux of conflict was not based on guile, fiat, caprice or bad faith of IRS, so there was no prospect for abuse of district court's process through enforcement of administrative summons. U.S. v. Fond du Lac Reservation Business Committee, D.Minn.1995, 906 F.Supp. 523.

4. Administrative procedure

Appearance of bias standard does not apply to administrative decisionmaking process under section of IGRA governing off-reservation gaming and acquisition of land in trust therefor under Indian Reorganization Act (IRA) and, thus, nonparty interaction is not improper per se and does not deprive parties of due process; land acquisition decision is neither quasi-legisla-

Mr. BURTON. Mr. Collier.

Mr. COLLIER. Mr. Chairman, in a letter to me dated January 9, you requested that I appear before the committee to discuss the decision by the Department of Interior to deny the Hudson application on Wednesday, January 28, 1998, and Thursday, January 29, 1998. I am happy to appear today. My involvement in the denial of that application was minimal and I am prepared to answer any questions you might have.

Mr. BURTON. Thank you, Mr. Collier.

According to the rule, the counsel for the majority is now recognized for 30 minutes.

Mr. WILSON. Mr. Duffy and Mr. Collier, good afternoon. Thank you very much for being here today.

Mr. Duffy, I believe you testified that you were counsel to Secretary Babbitt; is that correct?

Mr. DUFFY. I was actually counsel or to Secretary Babbitt, yes.

Mr. WILSON. You remained in that position until midway through 1996?

Mr. DUFFY. That is correct, yes.

Mr. WILSON. Mr. Collier, you were the chief of staff to Secretary Babbitt; is that correct?

Mr. COLLIER. That is correct.

Mr. WILSON. Mr. Collier, in the months before you left the Department of the Interior, did you in fact have a number of additional meetings than you would usually have had with Native Americans?

Mr. COLLIER. I met with two or three tribes in the month just before I left the Department, that is correct, sir.

Mr. WILSON. I would like to put up on the screen, if I may, exhibit 376, and just for everybody's convenience I think that I have managed to pass out lists of exhibits that I intend to be referring to and they are in the small packet in front of you, which might make it easier than looking through the large book, but you will have two opportunities there. Exhibit 376 is a memo from Scott Dacey to Gary Jordan and I would like to refer to a section on page 3 of that memorandum.

At the time of writing this memo, Mr. Dacey was the chief lobbyist for the Onieda tribe, which is one of the opponents to the Hudson Dog Track application, and the memo states, "Mr. Collier will be leaving the Department of the Interior at the end of June. He has been meeting with a number of tribes recently and says that he has been meeting with a number of tribes recently and says he is putting a report to the Secretary together concerning the future of Indian gaming. I expect he will be joining his old law firm of Steptoe and Johnson in Washington, DC, and his recent desire to meet with Indian tribes is his unique way of looking for future clients."

Do you agree with Mr. Dacey's characterization in this memo?

[Exhibit 376 follows:]

9

TO: Gary Jordan, Council Member

FROM: [redacted] Ducey

DATE: June 28, 1995

RE: Meetings of June 21-23 in Washington, D.C.

In an effort to follow up on our meeting from last week I thought it would be helpful summarize each of our meetings.

John Duffy, Counselor to Secretary Babbitt

We presented our position relative to the Hudson site and informed him of the actions the Stockbridge intend to take at the Kaukauna site. He was aware of the Stockbridge and their interest in Kaukauna.

Although he gave us no indication as to the position the Secretary would take on the matter, he did say the decision would be coming out soon. His chief concern related to the double standard the Department would be establishing should they decide against the tribes petitioning for the land acquisition--tribes usually want lands taken into trust over the objections from area communities and businesses.

Also attending this meeting was Howard Bichler, Tribal Attorney with the St. Croix Tribal Council.

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Kathleen Nilles, Partner, Gardner, Carton & Douglas

Ms. Nilles is an attorney who specializes in tax law. She formerly worked for the House Ways and Means Committee and was responsible for all tax matters relating to Indians and Indian tribal governments. The intent of this meeting was to explore how she might be of assistance to Oneida in establishing and implementing a tribal tax code. We learned that her background and experience would allow the Oneida to structure a tax code to avoid criticism from the federal government and would allow the tribe to most effectively take advantage of international trade laws.

Ms. Nilles is expected to send a work plan and proposal to the Oneida within the next two weeks.

Mary Frances Repko, Office of Senator Feingold

Senator Feingold had expressed a willingness to confidentially contact Secretary Babbitt in opposition to the Hudson proposal. To date he has not made that connection. Evidently, his Legislative Director counseled him to develop a public position on this issue rather than attempt to move "behind the scenes." He agreed with the advice of his staff and is still making up his mind.

Ms. Repko has been in contact with each of the tribes proposing to take the land into trust to determine their interest in this project. She tells me there is a high level of interest on behalf of the tribes.

I expect the Senator to make up his mind tomorrow--July 29.

Congressman John Ensign (R-NV)

Congressman Ensign is a member of the House Ways and Means Committee--the committee responsible for fixing the pension issue. He is also the Co-Chairman of the House Caucus on Gaming. Ensign is a former casino manager from Las Vegas.

Ensign appeared to understand the pension problem and said that he would check with various folks in his district to see whether he should support the provision. He said he was inclined to help us out because there is no "cost" to the provision. I have asked the Las Vegas Indian tribe to write a letter of support to Ensign.

Ensign was very interested in Indian gaming matters, and asked whether the Oneida would support an amendment to IGRA that would place a moratorium on any new Indian gaming. He said that such a bill would insulate tribes like the Oneida from future competition and we should support the measure. We gave him very little feedback to this idea.

I think Ensign has his eyes set on the United States Senate and I would expect him to run against Harry Reid in 1998.

Tom Collier, Chief of Staff to Secretary Babbitt

Mr. Collier will be leaving the Department of the Interior at the end of June. He has been meeting with a number of tribes recently and says that he is putting a report to the Secretary together concerning the future of Indian gaming. I expect that he will be joining his old law firm of Stepptow and Johnson in Washington, D. C. and his recent desire to meet with Indian tribes is his unique way of looking for future clients.

With respect to Hudson, Collier said the Department of Interior will not sign off on the Hudson proposal as long as Governor Thompson and the area community is opposed to the deal. He currently views both parties to be opposed to the deal.

Collier is of the opinion that Indians should support a narrow form of means testing as a trade-off for a strong Indian gaming bill. He thinks such a move will pacify the Republicans who think all tribes are rich. He thinks only two tribes would actually be impacted by means testing.

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He is also of the opinion that McCain has not been an honest broker in the area of Indian gaming. He feels if McCain were truly trying to protect tribes from any erosion to Cabazon he would simply not have any hearings on any bills impacting IGRA. Collier believes McCain's agreement to discuss this issue provides an avenue for change.

(Note: After thinking about Collier's ideas, I vigorously disagree with each of them. I will write a separate memo on this matter at your request.)

Jody Raskind, Small Business Administration

We discussed the SBA's Microloan Program. This program was expanded last year to allow Indian tribal governments to participate for the first time. The SBA will begin to accept applicants to the program within the next few months and I will keep you abreast of their progress. During our meeting we learned about the fundamentals of the program and that Oneida would in fact be eligible to participate in the program.

Should you have any questions, please do not hesitate to contact me.

Mr. COLLIER. I do not.

Mr. WILSON. When you left the Department of the Interior, you did in fact go to the law firm of Steptoe and Johnson, is that correct, Mr. Collier?

Mr. COLLIER. Yes, I first went to work for the law firm of Steptoe and Johnson in 1974, and I have been employed by that firm with a couple of opportunities for Government service since that time, sir.

Mr. WILSON. And Steptoe and Johnson has a significant practice dealing with Native American issues; is that correct?

Mr. COLLIER. No, sir, it does not.

Mr. WILSON. Are there a number of individuals currently employed at Steptoe and Johnson that deal with Native American issues?

Mr. COLLIER. There are several, sir.

Mr. WILSON. Does Steptoe and Johnson have an office in Arizona?

Mr. COLLIER. We have an office in Phoenix, yes.

Mr. WILSON. Was that first established at the time of Governor Babbitt's conclusion of his tenure as the Governor of Arizona?

Mr. COLLIER. It was not; it was established before that time.

Mr. WILSON. Now, it is my understanding that sometime after you joined the law firm that you began to represent the Shakopee Mdewakanton Sioux; is that correct?

Mr. COLLIER. That is correct.

Mr. WILSON. When did you first begin to represent the Shakopee?

Mr. COLLIER. In the month of November.

Mr. WILSON. Mr. Duffy, you were the counselor to the Secretary at the time——

Mr. BURTON. Let me interrupt. Mr. Collier, when did you leave the Department of Interior?

Mr. COLLIER. I resigned as chief of staff at the Department on the first of June, sir, and stayed there until the first of July, and I left the Department on the first of July.

Mr. BURTON. And when did you start representing the Shakopees?

Mr. COLLIER. In November.

Mr. BURTON. Thank you.

Mr. WILSON. And Mr. Duffy, when you finished your tenure at the Department of Interior, where did you go to work?

Mr. DUFFY. I joined Steptoe and Johnson at that time.

Mr. WILSON. So you went to work at the same place as Mr. Collier; is that correct?

Mr. DUFFY. That is correct.

Mr. WILSON. And it is my understanding you have also done some work for the Shakopee tribe; is that right?

Mr. DUFFY. I have worked on the matters, yes.

Mr. WILSON. Now just to put this in perspective——

Mr. BURTON. One second. When did you leave the Department of Interior?

Mr. DUFFY. I believe I left on July 17, 1996.

Mr. BURTON. Did you immediately go to work for the same law firm?

Mr. DUFFY. I did, yes.

Mr. BURTON. When did you start doing work for the Shakopees?

Mr. DUFFY. I don't recall. Several months later, I believe.

Mr. BURTON. Thank you.

Mr. WILSON. Just to try and put this in perspective, if possible. Was the Shakopee tribe in the Financial Analyst for the Indian Gaming Management Staff at the Department of Interior, identified as the wealthiest of the opponents of the Hudson Dog Track application?

Mr. DUFFY. I don't know.

Mr. WILSON. In fact, did you read the memorandum prepared by Mr. Hartman on June 8, 1995?

Mr. DUFFY. I don't believe so, no.

Mr. WILSON. There is a section there, and if you could, please put up exhibit 317A–1, page 8, and there is a reference in this document, and, again, if you would turn to page 8.

Mr. DUFFY. I'm sorry, our TV doesn't seem to be working.

Mr. WILSON. I think it is probably too small to see anything anyways. It may be better if you can look at the documents that are provided in the small packet in front of you, and it should be the second memorandum there. Just look to the bottom of the first full paragraph on page 8.

Mr. DUFFY. Excuse me, what exactly are you referring to?

Mr. WILSON. Exhibit 317A–8. I will read this, and I have a followup question. At the bottom of the paragraph, it states: "At $96.8 million, the per enrolled member profit at Mystic Lake is $396,700. Reduced by $8 million, the amount would be $363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA, section 11."

Mr. Duffy, when you were at the Department of Interior, did you ever meet with any members of the Shakopee tribe or their representatives?

[Exhibit 317A follows:]

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:
Indian Gaming-Management
MS-2070

June 8, 1995

To: Director, Indian Gaming Management Staff

From: Indian Gaming Management Staff

Subject: Application of the Sokaogon Community, the Lac Courte Oreilles BAnd, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)[1]

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables.

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[1] References are to the application documents submitted by the Minneapolis Area Office.

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Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period for Indian tribes in Minnesota and Wisconsin was extended to April 30, 1995 by John Duffy, Counselor to Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act. 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
Chairman, St. Croix County Board of Supervisors, Hudson, WI (Vol. III, Tab 2*)
Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

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The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)

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2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**
6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
11) Chairman, Bois Forte (Nett Lake) Reservation Business Committee (Vol. III, Tab 16***)
12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)
15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab
***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in the statement: "...it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

Hudson Dog Track Application

The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 -- stating that the resolution "does not retract, abrogate or supersede the April 18, 1994 Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the

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County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, "Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment ($150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

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The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1¼% of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all businesses, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its Global Gaming Almanac 1995, is expected to increase to $1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin
In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes
On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of $450 million in 1993, and $495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be $114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were $80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market of $480 million, a Non-Minneapolis Gaming Market of $220 million, and a Wisconsin Market of $500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western

Hudson Dog Track Application

Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over $600 million.

The projected Hudson market share of $80 to $115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by $50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5% ($25 million) Therefore, only $5 to $40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of $1 to $8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a $96.8 million net profit in 1993. A reduction of $8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At $96.8 million, the per enrolled member profit at Mystic Lake is $396,700. Reduced by $8 million, the amount would be $363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. I, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are not equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting a several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from $25 million in 1995 to $12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to re-order its spending plans.

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Market Saturation.
The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of $500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts

1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers
The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime
Hudson Police Dept. Crime & Arrests. (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the *St. Paul Pioneer Press* with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell

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3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm to Area Businesses

A. Wage Level
The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns
One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

IV. Property Values
An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bieraugel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkead, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase
Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

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2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500; and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities
St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning
According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water
The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage
The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

V. Roads
The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94.

The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis
The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, " . . . it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects $42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of $18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay $1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

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Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 — a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians

are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto* giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

Hudson Dog Track Application

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Mr. DUFFY. Not to my knowledge. They may have been present in the February 8 meeting, and I think I have learned later that they were present in the February 8 meeting of the Congressman's office, Congressman Oberstar's office.

Mr. WILSON. Mr. Collier, do you have any recollection of meeting with either members of the Shakopee or their representatives or lobbyists prior to your leaving the Department of the Interior?

Mr. COLLIER. Mr. Wilson, I don't believe I have ever met with the members of the Shakopee community while I was employed at the Department of Interior.

Mr. WILSON. And I will address this question to both of you. In 1995, just before the Hudson application was denied, I will ask you, Mr. Duffy, first, did you know any of the opponent tribes, for example, the Onieda, the Shakopees, the Mille Lacs, the St. Croix, had made political contributions to the DNC or to Democratic State parties?

Mr. DUFFY. Before the application was denied, I had no knowledge about that.

Mr. WILSON. Mr. Collier?

Mr. COLLIER. Nor me.

Mr. WILSON. Were either of you aware the opponents were said to be strong supporters of President Clinton?

Mr. DUFFY. No.

Mr. WILSON. Did either of you speak with chairman—then chairman of the Democratic National Committee, Don Fowler, about any issues involving the Hudson Dog Track application?

Mr. DUFFY. I don't believe I did, no.

Mr. WILSON. Mr. Collier?

Mr. COLLIER. Not to my recollection.

Mr. WILSON. If we could please put up exhibit 383 on the screen, and I will read you a section from the deposition, and I just wanted to get your comment on whether this refreshes your recollection at all.

Mr. Ducheneaux attended a meeting with then-Chairman Fowler, and, actually, I would like to ask either of you, you have both testified you have not spoken with Chairman Fowler about any issues relating to the Hudson matter, correct?

Mr. COLLIER. That is correct.

Mr. DUFFY. That is my recollection.

Mr. WILSON. Mr. Ducheneaux states, in the meeting he attended——

Mr. COLE. Excuse me, Counsel, do you have a page number?

Mr. WILSON. It is exhibit 383–1. I have 383–1, it is a two-page document. The first page says, "Deposition of: Franklin Ducheneaux." It should be the third document in the packet of information you have.

Let me just read you the comment Mr. Ducheneaux made in characterizing his meeting with Mr. Fowler. He said that at the meeting, "They indicated to Mr. Fowler that, at least the Minnesota tribes did, that they had been strong supporters of President Clinton in his race for President. They had engaged in getting out the vote efforts on their reservations. They had contributed to the Democratic candidates routinely, and they were outraged that the Bureau of Indian Affairs was not giving adequate consideration

to their objections, and felt that, particularly since one of the leaders of one of the tribes was a Republican, and also the Republican Governor of Wisconsin seemed to be getting some special treatment."

Did any of the observations made by Mr. Ducheneaux—were they ever brought to your attention, Mr. Duffy?

[Exhibit 383 follows:]

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BETS WRIGHT
DOMN GALLAGHER

EXECUTIVE SESSION
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

DEPOSITION OF: FRANKLIN DUCHENEAUX

Thursday, December 4, 1997

Washington, D.C.

The deposition in the above matter was held in Room 2203, Rayburn House Office Building, commencing at 10:00 a.m.

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Appearances:

Staff Present for the Government Reform and Oversight Committee: Jamie C. Wilson, Senior Investigative Counsel; Robert Dold, Jr., Investigative Counsel; Michael Yeager, Minority Counsel; Michael Yeager, Minority Counsel.

*** Notes ***

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Mr. Wilson. Good morning, Mr. Ducheneaux.
Mr. Ducheneaux. Good morning.
Mr. Wilson. On behalf of the members of the Committee on Government Reform and Oversight, thank you for appearing here today. This proceeding is known as a deposition. The person transcribing this proceeding is a House reporter and notary public. I would now request that the reporter place you under oath.

THEREUPON,

FRANKLIN DUCHENEAUX,

a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Mr. Wilson. I would like to note for the record those who are present at the beginning of this deposition. My name is James Wilson. I am the designated Majority counsel for this deposition. I am accompanied today by Bob Dold, who is an investigative counsel with the Majority. The Minority is represented by Mr. Michael Yeager.

Although this proceeding is being held in a somewhat informal atmosphere, because you have been placed under oath, your testimony here today has the same force and effect as if you were testifying before the committee or in a courtroom. If I ask you about conversations you have had in the past and you are unable to recall the exact words used in such

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conversations, you may state that you are unable to recall those exact words and then you are requested to give me the gist or substance of any such conversation to the best of your recollection. If you recall only part of a conversation or only part of an event, please give me your best recollection of that conversation or that event. If I ask you whether you have any information about a particular subject, and you have overheard other persons conversing with each other about that subject or have seen correspondence or documentation about that subject, please tell me that you do have such information and provide that information.

The Majority and Minority committee counsels will ask you questions regarding the subject matter of this investigation. Minority counsel will ask questions after Majority counsel has finished. After the Minority counsel has completed questioning, a new round of questioning may begin.

Members of Congress, if any should attend today, will be afforded an immediate opportunity to ask their questions. When they are finished, committee counsel will resume questioning.

Pursuant to the committee's rules, you are allowed to have an attorney present to advise you of your rights. It is my understanding that you have elected to appear today without an attorney; is that correct?

The Witness. Conditioned upon the statement I will make

*** Notes ***

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A I don't recall any specific statements. Again, the purpose of the meeting was to bring to their attention the concerns of the Minnesota tribes about what was going on, to find out what the status of the thing was, and they were responsive to those kinds of inquiries, but I don't remember any specific conversation.

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RPTR COCHRAN
DCMN PARKER
(11:00 a.m.)

Mr. Wilson. I have now provided for Mr. Ducheneaux a document which has been marked Exhibit FD-4, and the first page is what appears to be a fax cover page from the O'Connor & Hannan firm.

This document refers to a meeting that we have already discussed, and I don't want to go back over things we have discussed, but it refers to a meeting at Chairman Fowler's office at the DNC.

(Ducheneaux Deposition Exhibit No. FD-4 was marked for identification.)

BY MR. WILSON:

Q I have gotten ahead of myself there, because my question is do you remember where the meeting referred to in this fax took place?

A Generally, it took place at the DNC offices here in D.C. I believe, though I am not certain, that it took place in Mr. Fowler's office, but I am not certain of that.

Q Do you know how this meeting was arranged?

A I believe it was arranged through the O'Connor Hannon firm.

Q Did you have any involvement in setting up this meeting?

*** Notes ***

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A I had no involvement in setting it up.

Q Do you recall what was discussed during the course of the meeting?

A I don't have any specific recollections of conversations. The purpose of the meeting, and I believe the purpose was carried out, was to have the tribal representatives express their concern about what they felt was the failure of the Bureau of Indian Affairs to adequately consider the objections they were raising to the proposal, their outrage that they were being treated like that, and a request that Mr. Fowler see if the White House could convey that to the appropriate people in the Interior Department.

Q Do you recall whether the name of a corporation was, I'll refer to as Delaware North, came up during that meeting?

A I don't recall whether it did.

Q Do you recall whether the political affiliation of any of the applicant tribes or applicant tribe members was discussed at that meeting?

A I think generally the tribal representatives who were there, and I thought there were more, on the document you submitted there, there were not as many people as I thought were there, they indicated to Mr. Fowler that, at least the Minnesota tribes did, that they had been strong supporters of President Clinton in his race for President. They had engaged

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in getting out the vote efforts on their reservations. They had contributed to the Democratic candidates routinely, and they were outraged that the Bureau of Indian Affairs was not giving adequate consideration to their objections, and felt that, particularly since one of the leaders of one of the tribes was a Republican, and also the Republican Governor of Wisconsin seemed to be getting some special treatment.

Q You answered the question I asked about Delaware North, but do you recall whether Senator D'Amato's name came up during that meeting?

A I don't recall it did.

Q Do you know why this list was sent to --

*** Notes ***

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Mr. DUFFY. I don't recall having any information about President Clinton. I do believe that at the February 8 meeting there was a statement made about some of the tribes being Republicans and some being Democrats.

Mr. BURTON. The law firm that you two joined is the law firm that I guess Mr. Babbitt was a partner in at one time, right?

Mr. COLLIER. That is correct.

Mr. BURTON. When did the Shakopees become a client of that law firm?

Mr. COLLIER. In November 1995.

Mr. BURTON. So they became a client of this firm after the decision was made?

Mr. COLLIER. That is correct.

Mr. BURTON. When did you go to work for the law firm?

Mr. COLLIER. I began working for the law firm in July 1995.

Mr. BURTON. Is it safe to say you were the one that solicited and brought the Shakopees to the law firm?

Mr. COLLIER. No, it is not.

Mr. BURTON. Why did they come to the law firm?

Mr. COLLIER. They approached me and asked me to represent them. I did not solicit their business.

Mr. BURTON. They approached you?

Mr. COLLIER. That is correct, sir.

Mr. BURTON. But you did know of the declination of the application for the gambling casino by the ones that the Shakopees opposed prior to them coming to your firm?

Mr. COLLIER. Mr. Chairman, I have two comments with respect to your question. I am not certain that I actually did know that the application had been denied at that point. And, second, I never knew that the Shakopees were one of the tribes that were involved on either side of this issue. I wasn't involved in this issue enough to know who the tribes were that had an interest in it on either side.

Mr. BURTON. How about you, Mr. Duffy?

Mr. DUFFY. I'm sorry, what was the question?

Mr. BURTON. You knew, obviously, of this decision by the Department to decline the application of the tribes for the casino at the Hudson Dog Track site before you left.

Mr. DUFFY. Oh, yes.

Mr. BURTON. Did you have anything to do whatsoever with the Shakopee tribe coming as a client to the law firm?

Mr. DUFFY. None whatever.

Mr. BURTON. Did you have anything to do with the decision to turn down the site at the Hudson Dog Track?

Mr. DUFFY. I participated in the decisionmaking process.

Mr. BURTON. To what extent did you participate?

Mr. DUFFY. I was in the Secretary's office. I had what I have described as a monitoring role on the decisionmaking process.

Mr. BURTON. But you didn't make the categorical decision to turn it down?

Mr. DUFFY. I did not make the decision, no.

Mr. BURTON. Mr. Skibine said in a memo which we referred to last week, said on page 5, section 4—do they have a copy of this memo?

Mr. WILSON. Yes, they do. It is in the packet of information in front of you, and it is marked 337–5.

Mr. BURTON. 337–5. Page 5, section 4, it says—this is Mr. Skibine talking in his memo—he says, "It is true that extensive factual findings supporting the local communities' objections are nowhere to be found. DOI's position is that such extensive factual findings are not required, under section 20 of IGRA." And we go up to section 3. It says, "See comments under number 3 above." Go up to No. 3 and it says, "[t]he point here, and a very crucial one, is that the Department has to rely on the record and the opposition of local communities in the record, is the evidence relied upon. The Department," and then in parentheses, it says Duffy, "made a decision that the opposition of the local communities was evident per se of detriment and that the Department was not going to require the communities for detailed evidence to back up their opposition."

It sounds like you were very deeply involved in the decision-making process.

[Exhibit 337 follows:]

SURNAME

Indian Gaming Management
MS 2070-MIB

AUG - 5 1996

Memorandum

To: Mr. Scott Keep
Assistant Solicitor, Tribal Government and Alaska

From: George T. Skibine /s/ GTSkibine
Director, Indian Gaming Management Staff

Subject: Analysis of Factual Allegations in Plaintiffs' Appeal Brief in Sokaogon Chippewa Community

Following is the IGMS analysis of the above-referenced brief, with cross-references to the pages in the brief where the allegations are made:

I. ALLEGED VIOLATION OF DUTY TO ENGAGE IN CONSULTATION AS REQUIRED BY 2719(b)(1)(A) of IGRA

A. Factual Background

page 3 "*Should areas of concern with the application be identified, you will be so notified*" refers to the continuing review of the application as received from the Minneapolis Area Director, not to comments received during the extended comment period. IGMS was in the process of reviewing the application to see whether the "best interest of the tribes" portion of the two-part test was satisfied. Perhaps it should have been clearer to say "should other areas of concerns with the application be identified." However, this was what Duffy meant. Had the phrase intended to apply specifically to the extended comments period, it would have been phrased, "Should areas of concern be revealed during the extended comment period, you will be notified." This distinction is important because this Duffy letter is time and again used to attempt to show that the Department promised plaintiffs that they would have the opportunity to rebut the opposing tribes' arguments, and failed to carry through.

Argument on the absence of notification is based on the erroneous interpretation of the meaning of Duffy's letter. The administrative records shows that the IGMS asked for clarification from the tribes several times on the application under review.

EXHIBIT
337-1

1. IGMS asked for additional information on the property deed on January 12, 1995, (binder #12 at 2675), and received a responses from the tribes from Bill Cadotte (binder #12 at 2671 and 2679-2684) and DuWayne Derickson (binder #12 at 2715-2720 and 2726-2735).

   Clarifying information from the tribes was added on January 13, 1995 (binder #12 at 2676-2687).

2. The Area Office was notified on January 2, 1995, that consultation with the Governor of Wisconsin was missing from the application (binder #13 at 3154, second paragraph of Section A). The Area Office and the tribes did not respond.

page 4 "No one in the Department of the Interior is exempt from the tribal consultation process, including the Director of the IGMS." This sentence, from a May 8, 1995, letter to Chairman Ackley, is in response to an undated letter from Arlyn Ackley in which Ackley launches into a vicious personal attack on the IGMS Director whom he accuses of being solely responsible for allowing the additional comment and keeping that decision a secret from the plaintiff tribes. The undated Ackley letter somehow is not part of the administrative record. Our May 8, response goes on to say that we have fully complied with the consultation process.

B. Defendants Violated their Duty to Consult with Plaintiffs

page 6 Plaintiffs here rely on the Duffy letter to indicate that the Department failed to follow its duty to consult under IGRA. As indicated in the May 8 letter from Ada Deer, we believe that we fulfilled our duty under IGRA. As stated before, plaintiffs are misconstruing the Duffy letter to somehow find a Departmental "policy" to consult again with them after closure of the extended comment period. Unlike in Lower Brule, BIA is not arguing that it does not have to comply with guidelines and policies, but is affirmatively stating that it has fully complied with them. In fact, the extended comment period offered more consultation that is required under the Act. DOI had to end this consultation process at some point.

page 15 There is a reference here to the May 8 letter from Ada Deer. The whole letter should be referred to place the statement in context, and the incoming should be added to the record to clarify why the statement on consultation was made. The same goes for the reference to the Duffy letter of March 27, 1995.

page 16 Consultation was extensive. While the Area Director came to the opinion that the local opposition did not indicate detriment to the surrounding community, the Deputy Assistant Secretary reasonably concluded from the strong opposition of local governments, that those governments identified detriment. He reasonably believed that the local government officials were credible evaluators of all the factors, and he used appropriate discretion in agreeing with local government officials in deciding contrary to the Area Director's opinion. The Department had the consultation input of all the parties. The decision was made based upon that input. It was not arbitrary

EXHIBIT
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and capricious, but was based upon solid evidence, which also was credible evidence to local governments that reasonably believed and agreed that a casino at the Hudson Dog Track would be detrimental to the surrounding community.

The Area Office consulted at length with the tribes in response to local opposition as described in the application and its NEPA documents. The tribes were asked specific questions by the Town of Troy (binder #3 at 0612), which were never addressed (binder #13 at 3124-3129). IGMS concluded that legitimate concerns of the governments of the surrounding community had not been addressed in the application (binder #13 at 3154, second paragraph of Section B).

After receiving the comments submitted during the extended comment period, plaintiffs sent a June 7, 1995, letter to Secretary Babbitt, stating their position that "[A]ny competition-based objection by any other Tribe must be disregarded." Plaintiffs' input was received, included in the administrative record, and considered (binder #12 at 2897-2898).

page 16 Mr. Skibine has stated in affidavit to the Court that he made no such statement as "(I) wanted to keep (my) job." Any implication that Mr. Skibine may have made that it would be improper to discuss a staff report until it has been "adopted or approved" referred only to input from his staff preliminary to determining its accuracy and applicability as reflected in a Briefing Paper, February 2, 1995 (binder #12 at 2702), by Emily Ramirez.

The referenced meeting was with the proposed Manager of the facility and not the tribes. The obligation to consult with an Indian tribe does not extend to proposed business affiliates of the tribe. In determining whether an agreement is in the best interest of the tribe and its members, the Department often has comments for the tribe that it does not disclose to the other contracting party. The trust responsibility of the Department is to the Indian tribe, and may be in direct opposition to the interests of a proposed manager. It is quite proper to consult with the Indian tribe before discussing any matters with a proposed casino manager.

II. DEFENDANTS VIOLATED THEIR DUTY TO PROVIDE THE PLAINTIFFS AN OPPORTUNITY TO "RESOLVE" ISSUES THAT MIGHT HAVE A NEGATIVE IMPACT ON THE DEPARTMENT'S TWO-PART DETERMINATION

page 17 The record contains considerable evidence of input from and consultation with the tribes, even after the application and the Area Director's recommendations had been transmitted to the Central Office. A Chronology of Application (binder #11, 2193-2194), submitted by the tribes was received and considered, as were concerns with the application developed by the staff. Attached to the Chronology were duplicate documents which are elsewhere part of the administrative record.

On April 8, 1995, a letter from plaintiffs was added to the administrative record. The letter emphasizes five arguments for placing the land in trust status (binder #10 at 2179).

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A May 30, 1995, letter from Donald B. Bruns, a member of the City Council of Hudson, Wisconsin, in support of the application was added to the administrative record (binder #11 at 2373-2374).

A May 30, 1995, letter from State Senator Roger Breske supporting plaintiffs' application was added to the administrative record (binder #11 at 2372).

A May 30, 1995, letter from State Representative Barbara Linton supporting plaintiffs' application was added to the administrative record (binder #11 at 2375-2376).

A May 31, 1995, letter from a former member of the Common Council of the City of Hudson, Carol Hanson, supporting the application was added to the administrative record (binder #11 at 2378-2379).

A May 31, 1995, letter from Herb Giese, a County Supervisor in St. Croix County, in support of the application was added to the administrative record (binder #11 at 2380).

A May 31, 1995, letter from Sandra Berg, was added to the record (binder #11 at 2381).

A letter from Heather Sibbison to Senator Daschle (binder #11 at 2382-2383), memorializes meetings between representatives of plaintiffs and Mr. Duffy and the IGMS, during which plaintiffs' perspective was communicated to the Department.

A letter from Anthony R. Varda to Representative Gunderson rebutting some points of the letter in opposition to the application from Gunderson to Secretary Babbitt was added to the administrative record (binder #11 at 2384-2386).

A June 21, 1995, letter from the Milwaukee County Executive, F. Thomas Ament, supporting the application was added to the administrative record (binder #11 at 2390).

Petitions in support of the application with 114 pages of signatures were added to the record (binder #11 at 2404-2405 with sample signature page at 2406-2121).

Additional letters of support were added to the record (binder #11 at 2422-2516).

In addition, the guidance quoted by plaintiffs applies to actions by the BIA Area Office, not to what happens to the application once it is transmitted to Central Office. It should be clarified that the Minneapolis Area Director DID make a finding favorable to the plaintiff tribes. They should have no complaint about her decision. In fact, the opposing tribes are the ones who argued that the Minneapolis Area Director failed to properly consult with them. Plaintiffs argument here is non-sensical.

III. MR. ANDERSON'S DECISION WAS ARBITRARY, CAPRICIOUS, AN ABUSE OF DISCRETION, OR OTHERWISE NOT IN ACCORDANCE WITH LAW

A. Mr. Anderson's Decision That The Gaming Facility Would Be Detrimental To The Surrounding Community Was Arbitrary And Capricious

1. Congress' Intent As Expressed in § 2719(b)(1)(A) of IGRA and The Department's Guidance

IGMS has no comments on this subsection.

2. Factual Background

page 22 The draft report of a member of the staff (binder #13 at 3194-3209) was the sole conclusion of that member of the staff, who had been asked for a "devil's advocate" analysis of comments. The draft was not on official Department letterhead, but a scanned, computer generated replica of the letterhead. Official letterhead has blue ink, and the original copy in the administrative record and the computer stored file of the draft show that the draft report was not on official Department letterhead. The preliminary nature of Staff comments is reflected in a Briefing Paper, February 2, 1995 (binder #12 at 2702) by Emily Ramirez, "The findings of fact document will need to (sic) examined by the Director, IGMS, as to the position of IGMS in recommending approval or disapproval of the transaction." Mr. Hartman's views DO NOT represent the views of other staff members of the IGMS.

page 23 Footnote 5: The IGMS never finalized its analysis of the "best interest of the Tribe" portion of the two-part test in Section 20 of IGRA. This analysis was on-going, but we decided that it was pointless to pursue this area unless a determination was first made that the gaming establishment was not detrimental to the surrounding community.

3. Mr. Anderson's First Reason That The Gaming Establishment Would Be Detrimental To The Surrounding Community Was Arbitrary And Capricious

page 24 The point here, and a very crucial one, is that the Department has to rely on the record, and the opposition of the local communities in the record is the evidence relied upon. The Department (Duffy) made a decision that the opposition of the local communities was evidence per se of detriment, and that the Department was not going to require the communities for detailed evidence to back up their opposition. Duffy's position, as I recall, was that the Department should not interpret section 20 of IGRA to require local communities to do more than have general objections to the gaming establishment. If that is insufficient, he thought we should have the courts tell us so.

4. No Factual Support Existed For The Opposition of The Surrounding Communities

page 26 It is true that extensive factual findings supporting the local communities' objections are nowhere to be found. DOI's position is that such extensive factual findings are not required under Section 20 of IGRA. See comments under No. 3 above.

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GENERAL COMMENT: The language of the Indian Gaming Regulatory Act does not require that the Secretary find a specific detriment to the surrounding community. It provides that "(T)he Secretary ... determines that a gaming establishment on newly acquired lands ... would not be detrimental to the surrounding community." 25 U.S.C. § 2719(b)(1)(A). Absent conclusive evidence that there is no detriment, the Secretary can reasonably determine that facts have not shown that "a gaming establishment would not be detrimental to the surrounding community."

5. Mr. Anderson Improperly Based His Decision Upon Opposition To Competition By Other Indian Tribes

GENERAL COMMENT: The IGMS financial analyst's draft findings support plaintiffs' argument here. The draft of the Anderson letter I prepared did not contain the "leapfrog argument" that ended up in the final letter. Perhaps Michael Anderson, Hilda Manuel, and Heather Sibbison should be consulted if further elucidation is sought in this regard.

page 34 50 mile radius issue: The IGMS checklist provides for a 100-mile radius on consultation with nearby tribes. The Minneapolis Area used a 50 mile radius because that application was considered prior to the issuance of the Checklist. In general, there is nothing in IGRA that defines or gives any guidance on what is a nearby tribe for purpose of consultation. The mileage is more or less based on what a reasonable man would think is nearby, or surrounding. The radius is used rather than road mileage because it is a simpler way to calculate distances, especially for consultation purposes.

6. St. Croix Scenic Waterway

page 37 Concerns with the NEPA requirements were documented early in the review process in a Briefing Paper, February 2, 1995 (binder #12 at 2702), by Emily Ramirez, "there is a concern that the requirements of the National Environmental Policy Act have not been satisfied for the transaction."

B Mr. Anderson's Decision Was Arbitrary And Capricious Because The Department Repeatedly Violated Its Own Regulations

This section claims that the Department repeatedly violated its own regulations without presenting any evidence. IGMS has no additional comments on this section.

C. Mr. Anderson's Decision Was Arbitrary And Capricious Because He Did Not Consider Alternatives, He Did Not Consider All Options, He Did Not Analyze All The Facts, And He Did Not Provide The Plaintiffs An Opportunity To Challenge His Views

pages 41-47 Plaintiffs argue in this section of their brief that the Department was required to consider all reasonable alternatives before denying plaintiffs' application, relying on Motor Vehicle Mfrs v. State Farm, and Asarco v. EPA. DOI's views are that Section 20 of IGRA neither requires the agency to look at alternatives, nor requires it to give plaintiffs a chance to cure the defects before making a finding. The Tribe can always submit a new application curing any identified defects.

IV. MR. ANDERSON'S DECISION WAS BASED UPON IMPROPER POLITICAL INFLUENCE

pages 47-53 The only point made by plaintiffs in this section of the brief is that the affidavits submitted by DOI officials do not specifically deny improper political pressure, and that this silence constitutes an admission. IGMS hopes that there is no legal merit to this argument. We are ready to supply any additional affidavits, if desired.

The record contains evidence that plaintiffs sought political influence in the decision-making process. In a June 5, 1995, letter, Senator Daschle agrees to facilitate meetings between Mr. Havinick and former Representative Moody with Secretary Babbitt to discuss the Hudson Casino proposal. Both Messrs. Havinick and Moody were arguing in favor of the proposal.

V. THE DEFENDANTS REPEATEDLY DEPARTED FROM DEPARTMENT POLICIES WITHOUT EXPLANATION

pages 53-54 GENERAL COMMENT: None of the 10 items mentioned are existing policies of the Department. In its June 11 Order, the Court specifically found that John Duffy had the authority to entertain further comments from opposing tribes, and did not violate IGRA in doing so. ("[T]he Department's openness to information evidences its willingness to consider every perspective in order to reach a decision based on all available information.")

page 53 The Checklist used by Area Offices outlines the procedures for consultation. However, after an Area Director has transmitted the Findings of Fact and Recommendation to the Central Office, standard practice is for the Central Office to address concerns and consultations when it believes that it would be most expeditious, even while it often asks the Area Office to address concerns and consultations. This administrative record provides examples, such as – the IGMS worked directly with the tribe on land and title concerns (binder #12 at 2675) and (binder #12 at 2715-2720 and 2726-2735), but asked the Area Director to consult with the Governor of Wisconsin (binder #13 at 3154, second paragraph of Section A).

page 54 Prior to the Hudson Dog Track application, only two off-reservation land acquisitions for gaming purposes had reached a Department decision: Forest County Potawatomi, Green Bay, Wisconsin and Sault Ste. Marie, Detroit, Michigan. These applications are considered on a case-by-case basis, and there is no "Departmental policy" on how these are considered. In both cases the Department agreed with the recommendation of the Area Director, but in neither case was there a conflict in viewpoints between the tribes and local government officials on detriment to the surrounding community. It is not the policy of the Department to always follow the recommendations of Area Directors and the Indian Gaming Management Staff. In this application the IGMS had not reached a conclusion on whether approval of the application was in the best interest of the tribe and its members, and its conclusion on detriment to the surrounding community was not final. In addition, the draft finding on detriment in

the record represents the views of the IGMS Financial Analyst, and not the official determination of the Staff. The official determination of the IGMS would have to be signed by the Staff Director, and not stamped DRAFT.

VI. THE DEPARTMENT HAS RECENTLY CHANGED ITS POSITION AND NOW AGREES THAT A DECISION CONCERNING THE ACQUISITION OF PROPERTY IN TRUST PURSUANT TO 25 U.S.C. § 465 MUST BE BASED UPON THE FACTORS CONTAINED IN 25 CFR §151.10

IGMS believes that the Anderson decision does address the factors in 151.10. At the end of the decision, the reasons given for a negative determination under the "detrimental to the surrounding community" are cited as the reasons relied upon by the Secretary in exercising his discretionary authority to refuse to take the land in trust under 25 U.S.C. § 465, and implementing regulations in 25 CFR Part 151. We believe that it is sufficient for the Secretary to rely on any of the listed factors as the basis for a determination not to take land into trust. In this case, the purpose of the acquisition is for a gaming establishment, and for the reasons in the letter, the Secretary does not believe that he should take the parcel in trust if it is going to be used for gaming. The reasons cited in the letter are not arbitrary or capricious under the APA.

VII. MR. ANDERSON'S DECISION UNDER 25 U.S.C. § 465 WAS ARBITRARY AND CAPRICIOUS BECAUSE IT FAILED TO ADDRESS THE MANDATORY FACTORS CONTAINED IN 25 CFR 151.10

See comments under Section VI, supra.

bcc: Surname, Chron
BIA:GTSkibine:trw:7/31/96:219-4068 wp:a:sokaogon.mem
corr per GTSkibine:trw:8/3/96

Mr. DUFFY. Could you identify for me what this memo is?

Mr. BURTON. This is a memo from Mr. Skibine. It is a memo to Scott Keep, the assistant solicitor, of the tribal government in Alaska, from George Skibine. It was analysis of factual allegations in plaintiff's appeal brief in Sokaogon Chippewa community. So Mr. Skibine pretty much says that you were the guy who was making the decisions.

Mr. DUFFY. I don't think he says that at all.

Mr. BURTON. What do you think he said?

Mr. DUFFY. I think he indicates that I took a position on this, and I agree that I took a position with respect to whether or not we should use section 20 of IGRA, and I believe I said that we should also rely on section 20 of IGRA.

Mr. BURTON. But if you read down to section 4, he says, "DOI's position is that such extensive factual findings are not required under section 20 of IGRA." So his position is it was not required, and yet when he refers to you, you said that was the basis of the decision.

Mr. DUFFY. I just have to read this here. I am going to read section 4.

Mr. BURTON. We will suspend for a moment while you read it because we want to make sure we get through all the questionning.

Mr. DUFFY. Yes, go ahead now, I am ready.

Mr. BURTON. Mr. Anderson signed the declination, but it has been reported to us in the committee that Mr. Skibine made the decision to decline the application, but in this document, it says, DOI's position, Department of the Interior's position, is that such extensive factual findings are not required under section 20 of IGRA. It says, see comments, No. 3 above. It goes back and says you made the decision on another basis.

Mr. DUFFY. No.

Mr. BURTON. It says the Department, Duffy, made a decision that the opposition of the local communities was evidence, per se, of detriment, that the Department was not going to require the communities for detailed evidence just to back up their opposition.

Mr. DUFFY. Let me tell you, if I may, Mr. Chairman, what I understand this to be. This I understand is Mr. Skibine's response to the specific allegations in the complaint, and what he is saying here is that in response to the allegation that there is no factual support, he is saying it is true that extensive factual findings supporting the local communities' objections are nowhere to be found. Then he goes on to say that the position of the—DOI's position is they aren't necessary, and he explains it further on by saying that the language of the Indian Gaming Regulatory Act does not require such findings as a legal matter, rather, it provides, and I am quoting here, "That the Secretary must determine that a gaming establishment on newly acquired lands would not be detrimental to the surrounding community, the Department must find it is not detrimental to the surrounding community." And what he then says is absent conclusive evidence that there is no detriment, the Secretary can reasonably determine that facts have not shown that the gaming establishment would not be detrimental to the surrounding community. He is applying the test to the facts in the

record and he is indicating that the Department cannot make a finding of no detriment.

Mr. BURTON. The criterion that was used prior to this decision, though, as we understand it did not use that same set of rules.

Mr. DUFFY. That's the language in the statute.

Mr. BURTON. Just 1 second.

Mr. WILSON. Mr. Duffy, if I could just followup on a distinction you made there. You said that as a legal matter it was true, and you had read the statement, DOI's position is that such extensive factual findings are not required under section 20 of IGRA and you noted that as a legal matter that was a correct statement of fact. Does that represent a change of policy for the Department of the Interior?

Mr. DUFFY. I believe this is the correct interpretation of IGRA. What is done here is Mr. Skibine is clearly following the statute that the burden of determining detriment is not placed on Hudson. The burden of determining whether or not there is existing detriment is on the Department. The Department must make an affirmative finding of no detriment.

Mr. WILSON. But, Mr. Duffy, recognizing that you believe that this is a correct interpretation of this statute, does it represent a departure in the way the Department of the Interior had interpreted the statute?

Mr. DUFFY. I don't believe so.

Mr. BURTON. It is my recollection when Mr. Skibine was before the committee last week, we brought to his attention this was the first time this had been decided this way and Mr. Skibine said, well, he was not in charge of the Department at that time, in previous cases, and that they had been incorrect in the way they had applied the law in the past. So this was the first time that they had used this approach.

Mr. DUFFY. Mr. Skibine here is pointing out what is, in fact, the approach that he has used which follows the statutory language.

Mr. BURTON. This is a departure from what the previous procedure had been.

Mr. DUFFY. I don't believe so.

Mr. BURTON. You're the counsel, weren't you, to the——

Mr. DUFFY. I'm a counsel to the Secretary. I'm not the Solicitor's Office, the Solicitor's Office that determines the law and how the law ought to be interpreted.

Mr. BURTON. Did you talk to anybody at the Solicitor's Office about this?

Mr. DUFFY. I believe I spoke to Robert Anderson who was then the Associate Solicitor of Indian affairs.

Mr. BURTON. In your conversations with him did you talk about this being a departure from previous procedures?

Mr. DUFFY. I think we talked about whether or not the interpretation that Mr. Skibine gave here was an appropriate interpretation, and I believe he said it was.

Mr. WILSON. Just following up on that, you mentioned that you spoke with Mr. Robert Anderson about this matter. Did he provide you with a legal interpretation?

Mr. DUFFY. I don't recall a specific conversation. I did review as part of one of the depositions that I have participated in a docu-

ment which I believe indicated that there was a meeting at some time that I attended with Bob Anderson. But I don't have a specific recollection of that. But my understanding is that there was a discussion there of that subject matter. That's what the memorandum, I believe, says and that Mr. Anderson agreed with the position that Mr. Skibine has taken here.

Mr. WILSON. But notwithstanding the inability to recollect a specific date, do you have a general recollection that Mr. Anderson provided you some advice on this matter?

Mr. DUFFY. That's what this memorandum says, yes.

Mr. WILSON. This is just something of clarification for the record and for our knowledge. Is Mr. Anderson a member of one of the tribes opposed to the Hudson application?

Mr. DUFFY. I don't know what Mr. Anderson's tribal membership is.

Mr. WILSON. Perhaps that's something that we can followup on later.

Although it does not involve an application for a gaming facility, are you both aware that the Shakopee tribe is currently involved in an application to take land into trust in Minnesota?

Mr. DUFFY. We don't represent them on that.

Mr. WILSON. You do not represent them? Are you aware or do you have any knowledge of that, Mr. Duffy?

Mr. DUFFY. I believe—someone in conversation indicated that to me, but not as a legal matter. I think that was just a part of a conversation.

Mr. WILSON. Mr. Collier, do you have any knowledge of that?

Mr. COLLIER. I have a vague recollection that there is such a matter pending, but I don't know which land or any of the details and we don't represent them at all.

Mr. WILSON. Just as a related matter, are you aware that this application is being opposed specifically and strongly by the State of Minnesota, the city of Shakopee and Scott County where the land is located? Do you have any knowledge of that, Mr. Collier?

Mr. COLLIER. I have no knowledge of that.

Mr. WILSON. Mr. Duffy?

Mr. DUFFY. No.

Mr. WILSON. The followup question, I think, will get the same answer, but it has come to our attention that the area director of the Bureau of Indian Affairs has resisted meeting with any of the opponents to this application to take land into trust that the Shakopees have advanced and I was going to ask your opinion of that, but if you have no knowledge of the other facts, I think I'm probably going to not get very far with that. But you have no knowledge of that, Mr. Duffy, or Collier?

Mr. DUFFY. I do not have any knowledge, no.

Mr. COLLIER. No.

Mr. BURTON. I want to go back to this memo quickly. Mr. Skibine's memo. It says it is true that extensive factual findings to support the local community's objections are nowhere to be found. He's saying that there was no factual basis supporting the local community's objections. But then it goes up and says in section 3, the Department, Duffy, made a decision that the opposition of the local communities was evidence per se of the detriment. So he is

saying in section 4 that it is true that extensive factual findings supporting the local community's objections are nowhere to be found. Yet, it says that you made the decision that the opposition of the local communities was evidence per se of detriment.

Mr. DUFFY. Congressman, what you are asking me here is to interpret Mr. Skibine's memorandum. All I can tell you is what I understood.

Mr. BURTON. He was the fellow that was in charge of this area. He says, very clearly, it's true that there was no factual findings supporting the local community's objections; it was nowhere to be found. Yet, it says that you made the decision that the opposition of the local communities was evidence per see of detriment.

On what basis did you make that? Because Mr. Skibine was in charge of that area?

Mr. DUFFY. Congressman, Mr. Skibine says here, it is true that extensive factual findings supporting the local communities were nowhere to be found. Now, as a matter of fact, the decision very clearly indicates a series of factual findings with respect to detriment concerning both the local community and the local tribe. I think the emphasis here is on extensive factual findings.

Mr. BURTON. Mr. Duffy, I don't want to split hairs here, but there was a referendum, there were votes, the mayor was involved. At the very least it was split, the decision of the local communities, on this issue. You had several people testify before us that, yes, there was a vote 51 or 52–48 that the town approved it and that the mayor was for it.

Then, of course, there was a recall petition. There were just a lot of things that went on politically in this fight, but it was half a dozen of one and six of the other, so how did you come to the decision that there was evidence of detriment when there was that kind of a split in the community?

Mr. DUFFY. Because, Congressman, we took the approach with respect to evidence of detriment that we would look entirely at the concerns of the local elected officials. We realized that there was no way that we could make a determination based on referendum, some of which were paid for by private parties, material, letters which might have been generated, we couldn't figure out a question of whether or not the community was in favor or against something. So we looked at the local community.

The reason for that was that when you take land into trust, Congressman, you take it away from the local community, out of their regulatory jurisdiction, out of their control, and you give it to the tribe. So it seemed to us that we ought to focus our attention on the party that was losing control. They were the ones that we should consult when there was a determination.

Mr. BURTON. Is this the first time this has been done?

Mr. DUFFY. It is the first time that what has been done?

Mr. BURTON. That land has been put into trust like this and casinos constructed outside of the tribal community.

Mr. DUFFY. No.

Mr. BURTON. So it has been done before, there is no question about that?

Mr. DUFFY. Yes, it has.

Mr. BURTON. The dog track was already there. The parking lot had 8,000 spaces. According to testimony last week, they were only going to utilize about 4,000 of those spaces. As far as additional problems for the community from a physical infrastructure standpoint, there really wasn't going to be any. They had already done an environmental impact study before locally, and the environment was not going to be hurt anymore because there wasn't going to be that many cars and people there. So the only question was: Was there going to be a casino there and was this casino going to be stopped because of the local community or because of the lobbying efforts of the Shakopees?

The thing that troubles me, Mr. Duffy and Mr. Collier, is that you were involved, especially you, Mr. Duffy, in the decisionmaking process. You leave the Department of the Interior, and you go to a law firm and you immediately start representing the tribe that benefited from your decision, and Mr. Collier represents the tribe that benefited from these decisions.

Mr. Collier was the chief of staff and you were one of the chief legal experts in the Department of the Interior. It sure looks kind of funny, wouldn't you say? Doesn't it smack of a little bit of an unusual situation where you're involved in the decisionmaking process and the tribe that benefits ends up hiring you as a legal counselor with a law firm that you go to represent?

Mr. COLLIER. Mr. Chairman, if I may, since the Shakopee representation came to me while I was at the law firm of Steptoe and Johnson, I'd like to respond to your question.

Mr. BURTON. Sure.

Mr. COLLIER. I think there are two very important facts. The first one is that there is no connection whatsoever to any work I did at the Department of Interior, including my minimal involvement in the Hudson Dog Track issue, and my representation of the Shakopees. And just so there's no misunderstanding, let me say it again.

There's no connection whatsoever to that representation and work I did at the Department. And, second, I take issues of ethics and revolving door concerns very seriously. When I left the Department, Mr. Chairman, I received a briefing in detail from the ethics officer in the Department, who was a career official, that had been in that job during the previous administration and then was there during our administration, and from a member of the Solicitor's Office that has dealt with these issues for an extensive career. I returned to my law firm. And just to make sure there wasn't any misunderstanding with respect to that, I asked them to put the essence of the briefing they had given me in writing, and they sent that to me in a letter.

I, then, took that advice to the executive committee of my law firm and discussed the matter with them. On the executive committee was our ethics counsel, Bob Jordan, who is the ex-president of the D.C. Bar Association, the ex-chairman of the D.C. Bar Association Ethics Committee.

Mr. BURTON. You don't have to go into this long litany. I understand where you are coming from.

Mr. COLLIER. Mr. Chairman, you have been making——

Mr. BURTON. I know. But let me just ask you one final question.

Mr. COLLIER. If I may finish my answer, Mr. Chairman.

Mr. BURTON. You don't need to go into this long litany. I'm running out of time.

Mr. COLLIER. This is very important to me.

Mr. BURTON. I understand it is.

Mr. COLLIER. I want to make sure you appreciate that my representation of the Shakopees does not violate any ethics rule, it doesn't violate any statute. In fact, Mr. Chairman, there is a specific statute that allows that representation and that specific statute in certain circumstances requires you to inform the Department before you take on such representation. That does not apply in this situation. And yet I took an extra step under the law to inform the Department. And so the two points I want to make sure this committee understands without any doubt is that there is no question as to the legality or the ethical appropriateness of my representation of the Shakopee tribe; and, second, there is no connection whatsoever to work I did at the Department and my representation of the Shakopees.

Mr. BURTON. Because of your lengthy answer, I will take the liberty of just taking a little bit more time and I will give my colleague extra time, if he requires, as well.

First of all, the Shakopees were the beneficiary of the decision made by the Department of the Interior.

Mr. COLLIER. Mr. Chairman, I was not at the Department of the Interior when that decision was made.

Mr. BURTON. I understand.

Mr. COLLIER. I did not know the Shakopees were involved in that decision at all.

Mr. BURTON. How did the Shakopees come to ask you to represent them?

Mr. COLLIER. The Shakopees were interested in counsel on several matters and they sought references from several people throughout the country. One of those referred them to me. They came and met with me. We had a discussion about those issues, and they decided to retain me.

Mr. BURTON. Let me read to you what—this was a question put to Mr. Babbitt. Does it concern you if only in appearance that Mr. Collier and John Duffy, after they had left the Department, worked on behalf of one of the tribes that opposed the Hudson Casino application at your former law firm? Mr. Babbitt said, although Congress has explicitly exempted such representation from the employment restrictions imposed on former Federal employees, it is not something that I condone nor something that I would ever do. So your former employer thinks that this gives the appearance of impropriety. The thing that concerns me and we are not here to try to impugn anybody's integrity, but we——

Mr. COLLIER. I appreciate that, Mr. Chairman.

Mr. BURTON. But we are trying to get the facts out and the facts are that Mr. Duffy was involved in the decisionmaking process. You were the chief of staff. A very, very wealthy tribe, and other tribes, benefited by this decision, and you went to work and in a short period of time thereafter, both you and Mr. Duffy are the beneficiary of that decision because you are now representing the Shakopees. Now, although there may not be anything legally wrong

with it, the appearance of impropriety is very real even according to Mr. Babbitt, the Secretary of the Interior. With that, I will yield to Mr. Waxman.

Mr. COLLIER. Mr. Chairman, may I respond to your comment, please, sir?

Mr. BURTON. Sure you may respond.

Mr. COLLIER. With all due respect to my former boss, the Secretary of the Interior, since these matters came up, my counsel has advised me that I shouldn't discuss anything with him, and I have not. I don't believe that Secretary Babbitt, frankly, is fully aware of all of the facts with respect to my representation of the Shakopees, and I think that his comment reflects the fact that he's not fully aware of those facts.

Second, if I may, I want to reiterate that there is no connection whatsoever to any work I ever did at the Department of Interior and my representation of the Shakopees. Mr. Duffy was hired by my firm more than a year after that decision was made. I was not involved in this decision at the Department of Interior. I had left the Department when this decision was made.

Mr. BURTON. Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman. Mr. Collier, you described a lengthy process by which you had established the ethics process to move over to this law firm. Mr. Duffy, did you go through a similar procedure?

Mr. DUFFY. Yes, a relatively similar procedure, that's correct.

Mr. WAXMAN. Mr. Duffy, the applicant tribes and Fred Havenick testified last week that they believed that this application was going to go through, until politics got in the way. It is my understanding that all off-reservation casinos such as Hudson are closely scrutinized by the Department before they are approved; is that correct?

Mr. DUFFY. That's correct.

Mr. WAXMAN. Was the decision to deny the application based on the recommendations of George Skibine and the career gaming staff?

Mr. DUFFY. That's correct. And the decision was made by Mr. Anderson.

Mr. WAXMAN. In your judgment, was their recommendation based on the merits?

Mr. DUFFY. Absolutely.

Mr. WAXMAN. Mr. Collier, let me ask you the same question. Is it your understanding that the application was rejected based on the recommendations of career Department employees?

Mr. COLLIER. Congressman, I had left the Department by the time this decision was made and I don't have any firsthand knowledge as to any basis for this decision.

Mr. WAXMAN. Mr. Duffy, did you ever pressure the Department's career employees to recommend that the application be rejected?

Mr. DUFFY. No, I did not.

Mr. WAXMAN. And you, Mr. Collier, did you ever pressure the Department's career employees on their recommendation?

Mr. COLLIER. No, Congressman, I did not.

Mr. WAXMAN. Mr. Duffy, did you ever receive any instructions or opinions on the Hudson application from Harold Ickes or anyone at the White House?

Mr. DUFFY. No.

Mr. WAXMAN. And the same question to you, Mr. Collier.

Mr. COLLIER. I did not, Congressman.

Mr. WAXMAN. Mr. Duffy, what about the DNC or the Clinton/Gore campaign, did anyone from those organizations ever express an opinion to you about the Hudson application?

Mr. DUFFY. I don't believe so, no. No.

Mr. WAXMAN. And Mr. Collier.

Mr. COLLIER. No, Congressman.

Mr. WAXMAN. Let me address the next question to both of you. Did Terry McAuliffe ever speak to you about the Hudson application?

Mr. DUFFY. No.

Mr. COLLIER. No.

Mr. WAXMAN. Again, to both of you, do either of you have any knowledge that suggests that the decision to reject the application was made in return for promises of political contributions from the opponent tribes?

Mr. DUFFY. None whatever.

Mr. COLLIER. Nor me.

Mr. WAXMAN. Do either of you have any knowledge that the Department's decisionmaking process was tainted by any improper political influence?

Mr. DUFFY. None.

Mr. COLLIER. No.

Mr. WAXMAN. It seems to me a legitimate concern that you might have for the best interests of the Indian tribes was the effect that approval of off-reservation gaming might have on public support in Minnesota and Wisconsin for on-reservation gaming. In short it is possible that if the Department approved a series of off-reservation exceptions, the tribes could lose the benefits they currently have for the policy of on-reservation gambling. Was that part of your thinking, Mr. Duffy?

Mr. DUFFY. That's absolutely correct, Congressman. That's a part of my thinking, yes.

Mr. WAXMAN. And Mr. Collier? Do you remember?

Mr. COLLIER. Congressman, I don't recall specifically on this issue having that concern, but on this issue as a matter of general policy, yes, that was a concern.

Mr. WAXMAN. It was stated that Mr. Skibine told us last week that he didn't know about the precedents of these off-reservation issues, as I recall his testimony, and we can check it out, because there is a transcript, that he, as I recall his testimony, that he didn't look at the past precedents because he didn't think he needed to, to make a decision in this case. There have been some decisions in the past where off-reserves gaming has been approved; isn't that accurate, Mr. Duffy?

Mr. DUFFY. I believe that's correct, but I don't have a detailed knowledge of them.

Mr. WAXMAN. Well, in one case in Connecticut, the land was contiguous to the reservation and was approved for a trust.

Mr. DUFFY. Which case was that?

Mr. WAXMAN. I think it was in Connecticut. I don't recall.

Mr. DUFFY. Was it the Pequot case?

Mr. WAXMAN. Yes.

Mr. DUFFY. That was not a gaming case. That was a pure land in trust case. It had no gaming implications whatever.

Mr. WAXMAN. Are you familiar with a decision in Oregon on an off-reservation trust?

Mr. DUFFY. Are you talking about the Siletz case?

Mr. WAXMAN. Yes, the Siletz tribe of Oregon.

Mr. DUFFY. Yes. That was made in the prior administration, I believe.

Mr. WAXMAN. As I understand the issue there, the tribe filed an application with the Bureau of Indian Affairs area office seeking to have land taken in trust for gaming purposes. The 10-acre parcel that was to be taken in trust was located in Salem, OR, approximately 40 miles from the tribe's reservation.

On July 14, 1992, and October 21, 1992, the BIA area office forwarded to the BIA central office its written recommendation for a departmental finding that, one, the requirements for taking the land into trust under part 151 had been met and, two, under section 20, taking land in trust for gaming would be in the best interests of the tribe and would not be detrimental to the surrounding community.

Mr. DUFFY. I don't know the details of that decision, Congressman.

Mr. WAXMAN. Well, I point that out because there is this question of whether all off-reservation gambling requests had been approved and suddenly this one was disapproved. I don't think that's the historical record.

Mr. Collier, did the Shakopees make a contribution to the DNC?

Mr. COLLIER. I'm aware of one contribution that they made, Congressman.

Mr. WAXMAN. And that contribution was for $20,000, not $50,000 as has been alleged?

Mr. COLLIER. The contribution that I worked with them on was for $20,000, that's correct.

Mr. WAXMAN. Did you solicit that contribution?

Mr. COLLIER. I did not solicit the contribution, Congressman. They approached me and asked some questions of me with respect to that contribution, and I responded to those questions and gave them the assistance they needed.

Mr. WAXMAN. What did they ask you?

Mr. COLLIER. Congressman, it's difficult to communicate privileged communications between my client and myself. It is inappropriate to do so. But let me tell you what my goal was with respect to the work I did for the Shakopees on this contribution, and it was simply to make certain that the contribution was done in a proper and legal fashion.

Mr. WAXMAN. Do you know, Mr. Collier, of any linkage whatsoever between the Shakopee's decision to contribute to the DNC and the Hudson Casino decision?

Mr. COLLIER. I'm not aware of any information whatsoever that would lead me to believe that there was any connection between that contribution and the decision on the Hudson Dog Track.

Mr. WAXMAN. For the record, we were able to get the transcript from Mr. Skibine's testimony. He said, as the head of the office, the gaming office—this was part of the question put to him. "As the head of the office, the gaming office, which you then were, and with your 20 years at Interior, can you give me today any examples of which an application was rejected, not under Section 20, but under Section 465?" And Skibine answered, "I cannot. I would—I cannot really talk about matters that occurred before I became the gaming director, so I can't answer that question. There may be some. There may not be." And then Mr. Cox was asking the questions, "Do you know of any?" Skibine: "Specifically, I cannot recall of any." Cox: "In connection with preparing this, did you find any precedent?" Skibine: "No. This decision was made on the merits of this application." That was Mr. Skibine's testimony.

I want to put on the screen an excerpt from Mr. Duffy's deposition which was taken on January 26, 1998. Mr. Duffy said, "I don't believe there's a shred of evidence that Mr. Ickes ever talked to the Secretary about this or the Secretary ever talked to Mr. Ickes about it."

Is that a correct statement, Mr. Collier?

Mr. COLLIER. As far as I know, that's absolutely right.

Mr. WAXMAN. Excuse me, this was Mr. Duffy.

Mr. DUFFY. Yes, it is, Congressman.

Mr. WAXMAN. You said it and you still stand by it.

Mr. DUFFY. Absolutely.

Mr. WAXMAN. Then we had a colleague of ours, Mr. Horn, at a deposition. Again, a deposition is not like this, a public hearing with an audience, even a television camera. A deposition is in a room with a reporter taking things down. And Mr. Horn said, "Let me ask a question. One of your sentences was, I don't believe there is a shred of evidence that Mr. Ickes ever called the Secretary. Was that because it had been shredded at either end, between the White House and the Interior Department?" And then Mr. Duffy, your answer was, "No."

I wasn't there. I don't know if Mr. Horn asked that as a joke. Do you recall whether it was asked as a joke or was it sarcasm?

Mr. DUFFY. I think it was the latter. Sarcasm.

Mr. WAXMAN. I just point this out because I think that people who come in and give their depositions shouldn't be bullied by Members of Congress and I guess it's easy to bully people when you're in a little room and thinking that no one will pay attention. It also indicates that whatever your answer is, it doesn't make any difference.

The decision, in Mr. Horn's mind and others, is that there was some wrongdoing, no matter the fact that all the people made the decision on the merits, without political interference, that is their sworn testimony, and we really don't have anything to contradict those clear and unequivocal statements.

Mr. Chairman, I would just like to conclude by reiterating the comments I made during my opening statement last week, before I yield to others. These questions were necessary because we have

reached a point in the committee where individuals have to come before the committee to disprove baseless allegations that have been made against them. We are no longer in the normal situation where wrongdoing has to be proved by those making the allegations. No one has been able to prove, or even make, to me, a credible showing that there was any wrongdoing. And it seems to me those who make the accusations should bear that burden.

One last question, Mr. Duffy, just to clarify it. I cannot keep straight in my mind what the basis was, that Mr. Skibine wanted it turned down, the application, or what you suggested be the basis for turning down the application, but to me it doesn't sound like it makes a lot of difference, because we end up with the same result. Isn't that accurate?

Mr. DUFFY. I think that's exactly accurate. That's exactly correct. And it was really a technical matter within the Department of the Interior and not the question of the substance of the decision, but rather a technical question as to how we would express it and under what sections we would make our determination.

Mr. WAXMAN. Some people have suggested to me that the basis that you suggested for rejecting the application might be easier to challenge in court than the one that Mr. Skibine suggested. Do you know whether that is true?

Mr. DUFFY. I don't have an opinion on that, because we were not thinking about whether or not one was easier or one was harder to challenge in court. The underlying decision under 465 was an appropriate mechanism. Because, we would not under our approach have taken this land into trust no matter what the reason was it was going to be used for, this far away from the tribe's reservations. And I have repeatedly stated that, that this is a very long distance from their reservation.

The policy of the U.S. Government has been relatively clear on this, that as you get further away from the tribe's reservation, the impact that it will have on the local community rises in importance and the objection of the local community rises in importance versus land in trust close to the reservation. That is true regardless of whether it is gaming or not gaming. So Mr. Skibine was correct, that we could have made that decision alone. But I thought that it also should have been made under section 20, and that was my recommendation.

Mr. WAXMAN. I want to yield to Mr. Kanjorski.

Mr. KANJORSKI. Thank you very much, Mr. Chairman.

Let me clear up a few points here that we will be facing tomorrow and will not have the opportunity of asking them tomorrow when the Secretary is here. It is my understanding of your testimony, Mr. Collier, that you left the Department prior to this decision having been made and you participated in no way in the making of this decision. May I ask you if you know whether Secretary Babbitt in any way had a direct impact on this decision or participated in any direct way on this decision?

Mr. COLLIER. Not while I was at the Department, sir.

Mr. KANJORSKI. And you left within 2 weeks prior to the decision being filed.

Mr. COLLIER. I did, although for the month of June I was much less involved in these things. I had resigned my job as chief of staff. So really there is a 6-week period there that I was out of the loop.

Mr. KANJORSKI. Mr. Duffy, a lot of questions have been raised on this memorandum. Perhaps, if I could understand, and correct me if I am wrong, it was the burden of the applicant to establish that there wouldn't be a detriment on the community. It was not the burden of the community to prove there was a detriment; is that correct?

Mr. DUFFY. That's my understanding. My understanding is the way this is phrased, it is the Department's obligation to determine that there's no detriment.

Mr. KANJORSKI. So that the minuscule amount of evidence that would be on the record to indicate detriment would be sufficient for the Department not to conclude that there was no detriment?

Mr. DUFFY. That's what I believed the decision actually says.

Mr. KANJORSKI. You used some legalistic terms, at least in this clause, that you took the position that since there was opposition expressed on the record, although not overwhelming or extensive factual information, since they had made an opposition and since there was some evidence of opposition, that would be evidence per se of detriment.

Mr. DUFFY. I took the position, Congressman, that, in fact, I thought that opposition alone would be sufficient. That was my position, OK? Now, there was a considerable debate about that. And the ultimate decision is not that. That is not the ultimate decision of the Department. The ultimate decision of the Department rests on detriment, detriment to the local community and detriment to the local tribe, in this case the St. Croix Tribe, so there is detriment.

Mr. KANJORSKI. But if your interpretation of the weight of evidence necessary were a question, you then rather qualify by saying if the court doesn't agree with you, they'll reverse the opinion.

Mr. DUFFY. That's correct.

Mr. KANJORSKI. And that's up to a court and it's in court now, I assume that being one of the issues.

Mr. DUFFY. The question of whether that is adequate is a question initially for the Solicitor's Office and they have agreed with it.

Mr. KANJORSKI. Right. And on that position we have heard a lot of questions here from both sides about precedent. As I understand, this has nothing to do with stare decisis or common law, this is administrative law policy, and that each application is on its own merits and the facts particularly of that application; is that correct?

Mr. DUFFY. That's correct.

Mr. KANJORSKI. Whether all prior requests were made and granted or whether all prior requests were made and not granted would have no impact on how this particular decision would be decided; is that correct?

Mr. DUFFY. I'm not sure that's correct. I think there is a requirement for us to explain how we are deviating from policy if we have deviated.

Mr. KANJORSKI. It would be in deviation from policy but not pass conclusions on applications. It is not a matter of stare decisis here.

Mr. DUFFY. Not technically, no.

Mr. KANJORSKI. You have been named as, quote, the representative of the Secretary that had some impact on this decision. As I understand your testimony today, you absolutely deny taking part in any of the substantive part of this decision but were only effective in the process, how the decision should be addressing these particular sections, section 20 or section 365 or 465?

Mr. DUFFY. I think I said that I participated in the decisionmaking process. I made recommendations as to what I thought the decision ought to be and how we ought to treat the matter, in the sense that I made a recommendation, for example, that we deal with this under section 20. But I did not make the decision and the initial decision, recommended decision, was made by Mr. Skibine.

Mr. KANJORSKI. Did that decision and recommendation in draft form get created before you stepped into the picture to polish the decision and see that it comported with what you thought the legal requirements would be?

Mr. DUFFY. My sense of the timing is that I received a decision recommendation from Mr. Skibine that had already been made, yes, Congressman.

Mr. KANJORSKI. Do either one of you know any involvement of Secretary Babbitt in the decision in this matter? And, second, do either of you know of any political influence or influence as a result of political contributions that affected this decision or imposed the Secretary into this decisionmaking process?

Mr. DUFFY. I don't know of any involvement of Secretary Babbitt in making this decision, no. And I know of no political influence on this decision. This decision was made on the facts, on the merits. It's obviously a good decision, and I am constantly amazed that this is not obvious to all parties.

Mr. KANJORSKI. Mr. Collier.

Mr. COLLIER. I agree entirely with Mr. Duffy's answers.

Mr. KANJORSKI. Maybe I'll just go off the record in noting that the chairman is not an attorney by profession. Let the record show that it is not unusual, Mr. Chairman, for an attorney to be retained by opponents in a prior case or by disappointed parties in a prior case or members of a jury that may have witnessed that attorney in action. As a matter of fact, prior to the right of advertising that was very common, how an attorney or a law firm built a practice. To imply that there is some improper connection with gaining a client because of your demonstrated expertise as a counselor would do a great disservice to the legal profession.

I think, Mr. Collier, I'm going to ask you, is that what you're trying to show, that in every instance you used every method to determine what would be ethical, and you went beyond the path of notifying the department that you were going to undertake this representation because you knew it was an Indian tribe and your prior activities in the Department of Interior, you had some effect on Indian tribes; is that correct?

Mr. COLLIER. Mr. Congressman, you have said it much better than I did. I agree with your characterization.

Mr. KANJORSKI. Mr. Duffy, from your standpoint, I don't know, are you both at the same firm now?

Mr. DUFFY. We are, Congressman.

Mr. KANJORSKI. And I assume that is a rather long-existing firm of high integrity, both in Washington and in Arizona; is that correct?

Mr. DUFFY. Absolutely, Congressman.

Mr. WAXMAN. Mr. Kanjorski, if you would like to complete that last question, because I wanted to yield to somebody else.

Mr. KANJORSKI. More than happy, Mr. Chairman.

Mr. WAXMAN. Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman.

Mr. Duffy, you were saying earlier that there is a relationship between the distance between the reservation and the site of the hoped-for casino; is that correct?

Mr. DUFFY. Yes. I was talking about the underlying statute of taking land into trust, section 465 and the regulations under that which are found in 25 C.F.R., section 151. There it clearly indicates that to the extent that the request for trust land is distant from the tribe's reservation, greater weight should be given to the objections of the community in which the new trust land would be located.

Mr. BARRETT. Is that in the statute or is that in——

Mr. DUFFY. It's in the regulations. It's written in the regulations.

Mr. BARRETT. So in this case, again, how far from the reservations was the site, was the dog track?

Mr. DUFFY. I believe it was 188 miles from one reservation. The closest I think was 85 miles. It was 85, 165 and 188 miles from the 3 reservations.

Mr. BARRETT. Just for my own benefit, is there any language that talks about crossing State lines? I know that there was the one case in Nebraska and Iowa, but let's say that there was a spot here in Virginia and you had a Wisconsin tribe that wanted to move to have Indian gaming there. Is that something that would be permissible under IGRA or under the Federal laws?

Mr. DUFFY. In section 151, the one I just previously referred to which discusses the distance, also discusses the question of State lines and indicates that's another negative factor if the land in trust, putting aside gaming now, just an ordinary land-in-trust application, if it would cross State lines.

Mr. BARRETT. But hypothetically, you could have a situation where an Alaskan tribe or a Wisconsin tribe could move into another State?

Mr. DUFFY. Hypothetically, it could move. The Pine Ridge Sioux, for example, one of the poorest tribes in the country, could establish a gaming facility in, say, Knoxville, TN.

Mr. BARRETT. I was reading a report that quoted Mr. Babbitt last week, that talked about the different tensions within the Department, and I don't know if "tensions" is the right word but the debate. Is there a difference of opinion as to the strength of local opposition between the Bureau of Indian Affairs and the Department of Interior staff?

Mr. DUFFY. Not on this decision, I don't think.

Mr. BARRETT. Not on this decision but I'm talking—no, I understand there isn't on this decision, but just on the weight that is given to a local community's opposition. I think of the Bureau of Indian Affairs as being more of a proponent of the wishes of the

tribes and not necessarily that being the case for the Interior. Am I wrong in my interpretation there?

Mr. DUFFY. Well, I think—I don't think that that's entirely fair, no, Congressman. I think that the Department of Interior as a general, as a whole, has an obligation to Indians and that obligation is effectuated by the Bureau of Indian Affairs. Obviously one of the reasons the Department of Interior has a central policymaking organization in the Secretary is for him to make some of these decisions from a higher plane, or from a broader perspective.

Mr. BARRETT. You were a proponent of making this decision under section 20; is that correct?

Mr. DUFFY. Yes, I was.

Mr. BARRETT. And that is the taking land into trust provisions?

Mr. DUFFY. That is the provision with respect to gaming. I fully supported Mr. Skibine's idea that this application should be rejected simply on the grounds of section 465, on the grounds that it was not an appropriate acquisition of trust land this far from the reservation with these many problems over the strong objection of the community. So that's 465 alone. I thought we should also consider and examine this under section 20.

Mr. BARRETT. Can you tell me what the legal standards were, at the time that decision was made, for challenging each of those decisions?

Mr. DUFFY. When you say the legal standard, do you mean the process by which they would be challenged or what was the review standard?

Mr. BARRETT. The review standard.

Mr. DUFFY. I think the review would be arbitrary and capricious with respect to section 20. It's a little unclear what the standard was under 465. At the time the Solicitor took the position that the Department had unreviewable discretion under section 465 and therefore it could make any decision it wanted.

Mr. BARRETT. This is a hypothetical question. If the decision had been made solely on the basis of 465, one could make the argument that it was nonreviewable.

Mr. DUFFY. That would have been the argument that I presume the Solicitor's Office would have made, yes.

Mr. BARRETT. So by including section 20 language, you were in effect opening yourself up to a lawsuit?

Mr. DUFFY. Section 20 did provide a basis for a reviewability—for reviewability, yes, in the district court.

Mr. BARRETT. Mr. Waxman, I have no further questions at this time. I don't know if Mr. Kanjorski does or, Mr. Waxman, if you do. I will yield my time back to Mr. Kanjorski.

Mr. KANJORSKI. Just to go on that point, if in fact there had been political influence or consideration because of political contributions, you would have done a solid lock on the situation, if you gone over 465 as the reason, because that gave you absolute discretion. And it would have closed off the dog track people from ever raising a question or the Indians from raising a question. The very fact that you did use the process of using section 20 gave judicial review.

Mr. DUFFY. At the time, Congressman, I have to say I did not think about those factors. But as you say them here, yes, that's correct.

Mr. KANJORSKI. Thank you.

Mr. WAXMAN. That is a good point, because no one anticipated, I assume, Mr. Duffy, when you were trying to decide on what basis to make this decision, that somebody was going to come in and question whether the decision was made based on political influence or any interference.

Mr. DUFFY. Absolutely. There was no suggestion of that.

Mr. WAXMAN. The purpose of our hearings, and this is the third day on this same subject, is whether the decision by the Department of Interior on this particular application to have a Las Vegas casino off a reservation in Hudson, WI was made because of political corruption. In other words, because campaign money was given to the Democratic party or the Clinton/Gore, and because of that, the White House, or someone in political power told the people in Interior who had the actual decisionmaking authority to make it a particular way.

Can you just say to us, you are under oath, whether there was any interference, whether there was any kind of pressure from the White House or from the Democratic party or from anyone outside the Department of Interior to come up with the result that was arrived at?

Mr. DUFFY. I can, and I will. There was none. None. None.

Mr. WAXMAN. And, Mr. Collier, you are also——

Mr. COLLIER. I emphatically agree.

Mr. WAXMAN. I thank you both for your testimony. We still have some time, but I will yield it back to the chairman.

Mr. BURTON. The chairman yields back the balance of his time. Mr. Souder.

Mr. SOUDER. First I would like to say for the record that since my friend from California has had his deposition questions up there twice, that he is a pretty moderate, mild-mannered man, and I don't think his intention is to badger witnesses. I talked to him once on the floor, that certainly wasn't his intent, so I wanted to say that on his behalf.

Mr. Duffy, were you familiar with the Detroit casino? Did that occur while you were at the Department of Interior?

Mr. DUFFY. Yes, it did.

Mr. SOUDER. That tribe is farther away than these tribes, right, from Detroit, it is my understanding, by a large distance.

Mr. DUFFY. I don't know.

Mr. SOUDER. Were they not given additional time when there was community opposition, to try to work with a referendum, to try to see if public opinion, which in fact can be fairly fluid in these situations and generally is not particularly receptive to casinos in a community regardless.

Mr. DUFFY. I don't know. I wasn't involved in that aspect of it. I don't know.

Mr. SOUDER. Do you know whether in this particular case, either you or Mr. Collier, whether or not the applicants were told that there might be problems? That was the goal of the agency, to work

with particularly poor Indian tribes and try to work through it, was it not?

Mr. DUFFY. I don't know what Mr. Skibine told the applicants.

Mr. SOUDER. Do you believe that that is an important part of the process?

Mr. DUFFY. I would assume that Mr. Skibine did what he thought was appropriate. The applicants had been consulted extensively at the area director's office.

Mr. SOUDER. So you didn't ask him?

Mr. DUFFY. What?

Mr. SOUDER. You didn't ask him whether he had been working with those tribes.

Mr. DUFFY. No.

Mr. SOUDER. Particularly given the fact that he told our committee that the way that he told them was their letter of rejection. He had not discussed the problems that were developing. It seems like—let me ask a specific question of both of you. Does not the law require such consultation when it is being rejected? In other words, when the Indian tribes that were requesting it, when they are about to get rejected, doesn't the law require working with the Indian tribes to tell them what the problem is with their application and see if it can be worked out before you just unilaterally rule against them?

Mr. DUFFY. No, I don't believe the law requires that.

Mr. SOUDER. You don't think that that is—my understanding, and I am not an attorney, my understanding was that it certainly seems like a logical goal of the Department of Interior to work with the poor Indian tribes and not just outright reject them.

Mr. DUFFY. Congressman, it would be an absolutely infeasible approach to the decisionmaking process at the Department of Interior to receive applications from people and then after having received information from them, when we were in the decisionmaking process, to stop the decisionmaking process and ask them for more information.

I mean, the decision forms itself by consensus. It is made when Mr. Anderson, the man who has the responsibility to make the decision, signs the decision. Thereafter, the decision on the facts goes out.

Mr. SOUDER. You are saying——

Mr. BURTON. If the gentleman would just yield quickly. I just talked to our counsel about this and he says the law is pretty specific, that it does require consultation with the tribes in question before a decision like that is rendered so that they can try to correct those.

Mr. DUFFY. And they were consulted, at the area level.

Mr. BURTON. At the area level. I thought this was pretty much approved all the way up the chain.

Mr. DUFFY. But the information that was the basis of the decision was collected at the area level.

Mr. SOUDER. At that level, we have numerous memoranda. I mean the area level recommended approval. In fact the Andersen study, you're familiar with the Andersen study, said there wasn't detriment.

Mr. DUFFY. I'm not familiar with the Andersen study.

Mr. SOUDER. That was submitted after the Department of Interior—and what partly we're looking at here is at the area level where the consultation was occurring, there wasn't that warning. Once it was kicked to Washington, an amazing process occurs. All of a sudden one tribe is left out until they do hire a high-powered attorney who had been a former partner of the Secretary to come in, because there was a whole intervening period there in June that is very disturbing. What I am trying to figure out is how one group was shut out while the other group had different Congressmen contacting, multiple memos flying around. Whether you saw them or not is something apparently we're not going to be able to resolve, I will take you at your word. It is kind of a questionable thing to us when we look at Detroit, where in fact the tribe is from farther away, with community opposition, apparently had time to correct the situation, and they didn't here in Hudson.

Mr. DUFFY. Congressman, this really surprises me. It really surprises me. Because to me, the tribes—once the decision is made, the tribes could have come back for reconsideration. They could have filed another application. We are simply making the decision on the facts as they appear on that record. We are not foreclosing them from ever taking any action.

Mr. SOUDER. Isn't the goal here of this whole act, which I would not have voted for—and by the way, I just want to say for the record, I think you made the right decision, too. I am worried you made it for the wrong reasons. If not yourself, someone. Is not the point here that there are many very poor Indian tribes and we're trying to figure out how to provide employment for them? You have a group of three very poor tribes in effect at this point being blocked by several much more affluent tribes. The logical process would be to say, if you are in the process of turning them down, to give them options to work through, to see what you can do for them, unless of course there was political influence, and that's what we're trying to find out.

Mr. DUFFY. Congressman, one of the objections was that they would have detrimental impact on the St. Croix tribe.

Mr. SOUDER. But that is not what Arthur Andersen in that study found at that point. It said it was minimal impact, it may have been up to 10 percent, and the claim of detriment is not a factual statement.

Mr. DUFFY. That's millions of dollars, Congressman.

Mr. SOUDER. A detrimental impact. There was a detrimental impact whenever the next casino went in anywhere in the State of Minnesota. The question is, is it a significant impact? I like your interpretation because, in effect, your interpretation can block any casino anywhere. I mean, Atlantic City has a detrimental impact on Las Vegas.

Mr. DUFFY. Congressman, the question is whether or not there was going to be a detrimental impact. There was going to be a detrimental impact here. People would lose a great deal of money. The question was, what was meant by detrimental? How much impact was necessary to make it detrimental?

Mr. SOUDER. Three times the Arthur Andersen study said there was not significant detrimental impact and that was not a valid consideration for rejection.

Mr. DUFFY. Congressman, this is an argument or a discussion that I'm interested in, because I like discussing these issues, OK? But just as background, the purpose of IGRA was to allow Indian tribes to game on their reservations. It was, as I say in my opening statement, an exception to have off-reservation gaming, for many other reasons, as was pointed out.

Mr. SOUDER. As is Detroit.

Mr. DUFFY. Right.

Mr. SOUDER. In fact, the Mystic Casino, is that on a reservation, I am just curious, the Shakopees?

Mr. COLLIER. My understanding is that it is, yes, sir.

Mr. SOUDER. It is in the metro area. I didn't know that.

Mr. COLLIER. My understanding is that it's on their reservation.

Mr. SOUDER. Like I say, I have a concern that we're going to move to gas stations and all kinds of other things off the reservation. It's a legitimate concern. The fact is we have moved beyond that in the law and we need to change the law.

Mr. DUFFY. We address your issue. We don't disagree with you. We are trying to address your issue administratively. That's the reason for this decision. We understand your concern and we're trying to address it administratively.

Because frankly, speaking for myself now when I was at the department, I don't want you to change the law. I want to interpret the law in the way that will convince you that you don't have to change the law, because I think the Indian Gaming Regulatory Act is Indian tribes' real opportunity to make some money and to get to a position in this society that has been denied them for many, many years. With great respect for the Congress of the United States, I do not believe you were prepared to appropriate sufficient funds to do that. Therefore, I think Indian gaming is the only way to do it.

And we are trying to make Indian Gaming Regulatory Act—how can I say this—I don't want to say appealing to you, but not obnoxious to you. We are trying to not have every community in America cry out, hey, we could have a gaming application here. We don't want that. That's why we're making these determinations. But purely on policy grounds. The Detroit application was strongly, overwhelmingly supported by people in Detroit. The mayor came in to see me.

Mr. SOUDER. Not initially. The application was delayed for an extended period of time so they could run advertising and change the thing, which you didn't give to these tribes.

Mr. DUFFY. Congressman, if there's a change in the view of the position of the St. Croix tribe or of the local community, this tribe could come back.

Mr. SOUDER. You don't think it's ironic that wealthy tribes seem to go farther, and tribes that give more money seem to go farther than poorer tribes that don't give as much money and aren't as wealthy? That's the irony.

Mr. DUFFY. It's an irony only because you're juxtaposing things that actually have no connection. There is no connection between what these individuals gave and this decision. No connection whatever. I don't know how strongly I can say that.

Mr. BURTON. The gentleman's time has expired.

Mr. Barr.

Mr. WAXMAN. Well, Mr. Chairman, I will take my 5 minutes.

Mr. BURTON. The gentleman is recognized for 5 minutes.

Mr. WAXMAN. I just want to jump into this discussion, and direct Mr. Souder to some discussion on this as well. I am impressed that you seem to have some knowledge of this Indian gaming law. I am learning a lot more than I ever wanted to know about this law. This is not the committee with jurisdiction over that issue, so if you think the law ought to be changed, it may be on the Resources Committee, it may not be, but that is the committee that is going to have to look at it.

You said you agreed with the decision, but you disagreed with the way it was reached, and you seem to raise questions about maybe they didn't consult with the tribes sufficiently. I think that is a matter open to dispute. Or perhaps you didn't think that Mr. Duffy's theory or grounds were as good as Mr. Skibine's. But what does that have to do with why we are meeting here? If the decision was made on one basis to turn it down or a decision was made on another basis to turn it down, and it wasn't based on political interference, then it's up to another committee to decide whether they ought to have a third reason to turn it down or other procedural steps that they should follow.

I am going to yield to you. What are you getting at?

Mr. SOUDER. What I am getting at is I believe they made the right decision to turn down the casino, but I fear it is because of the financial impact.

Mr. WAXMAN. Financial impact on whom?

Mr. SOUDER. The contributions that came in after the decision, the processes that were occurring, all the influencing.

Mr. WAXMAN. But you haven't established that. Your whole time was taken up over whether they consulted with the tribes.

Mr. SOUDER. I, in effect, took them at their word. They are not going to change their position here that they were not under political influence, so there is no real point for me to ask that, or I would be called badgering the witness. I was trying to establish a more technical point; that is, was there a consultation with the poor tribes who were rejected.

Mr. WAXMAN. Look, we had Mr. Skibine, Mr. Hartman, Mr. Anderson, all the career people at the Department of Interior, very familiar with this law and very familiar with this case. They said there was no political interference, they made a decision on the merits. Now we have Mr. Duffy, who worked at the Department, who has given us that same testimony, all of them under oath. I mean, it is a serious matter when you say things under oath. It is a lot more serious than making a charge to get into the newspapers.

So we have no evidence of any political interference, we just don't. And we have a lot of questioning as to whether the decision should have been made on one basis as opposed to another basis. That is a legitimate point, and you know what, it is going to be fought out in a lawsuit, because Mr. Duffy decided to turn them down on the grounds it is reviewable, and Mr. Havenick, who is still here, he has been here for 3 days, not alone, with a panel of lawyers, he is looking for grounds in the court case to overturn the

decision. Now, once it is overturned, as I understand the law, if he doesn't get his way, then he has to submit another application.

Is that right, Mr. Duffy?

Mr. DUFFY. It depends on what the ground is, but it would have to be sent back to the Department for further action.

Mr. WAXMAN. So he is challenging on all sorts of different grounds. As I understand the judge's decision, which Mr. Barr earlier cited, he had a quote from the judge, and the judge said, political interference, but as I understand her decision, she said she had enough evidence that there might have been political interference, so she decided that discovery can be proceeded on the questions of political interference, she wasn't going to limit their lawsuit on procedural grounds, as to whether there was some kind of arbitrary and capricious decisionmaking at the Department of Interior, which is also the grounds Mr. Havenick and his partners are basing their objections to the decision on.

Mr. DUFFY. That's correct.

Mr. WAXMAN. OK. Well, look, I just want a reality test. We all seem to think this was an appropriate decision because the local people didn't want it, and I take that as a very serious matter. You can cite Atlantic City and say the local people might not have liked it. This was not an Indian land taken under reservation. When an Indian tribe takes land under trust, that means that the local people cannot pass laws applying to that area; isn't that right?

Mr. DUFFY. That's correct.

Mr. WAXMAN. So even though the State of Wisconsin, the city of Hudson, and others who were living there didn't want this casino, their decisionmaking would have been completely irrelevant if the Department of Interior decided to use this little loophole that says land can be taken as a trust if it is an Indian tribe, or tribes, and then Federal law would apply; am I accurate in that?

Mr. DUFFY. That is why they can game on it, because it no longer is governed by local law, it is now governed by the tribes' law and the Federal law in the Indian Gaming Regulatory Act.

Mr. WAXMAN. There was a meeting Mr. Eckstein had with the Secretary, and he—did he meet with you?

Mr. DUFFY. He met with me before he met with Secretary.

Mr. WAXMAN. Then what happened at his meeting with you?

Mr. DUFFY. I told him the application was going to be denied.

Mr. WAXMAN. But Mr. Eckstein was there because he was hired by Mr. Havenick to make the case to you; isn't that right?

Mr. DUFFY. That's correct.

Mr. WAXMAN. He was their lawyer, lobbyist. The argument that these poor Indian tribes didn't have their say is absolutely incorrect. They had their say to the point where they hired a guy who was hired primarily, as best I know, because he could get access right to the Secretary, at the highest levels.

Mr. DUFFY. Mr. Eckstein, I think, himself concedes he saw both the gaming management staff and he contends—although I don't recall this, he contends he also saw me in a meeting on May 17, along with Congressman Moody, who was employed also to lobby on behalf of the tribes.

Mr. WAXMAN. Mr. Skibine testified he met with the Indian tribes that wanted this application. He also met with the Minnesota con-

gressional delegation that didn't want it. He got both sides to say what they had to say, then as a man who had no financial interest in this, without any political interference, he decided that this was too far a reach outside of a reservation for tribes that were 80 to 200 miles away to be allowed to take an area outside of local control, where the local people didn't want it, and hand it over to the Federal Government, and then allow them to open up a casino.

Mr. DUFFY. That's exactly correct.

Mr. BURTON. I am going to take my 5 minutes, but I will yield to Mr. Barr the majority of it.

I want to make a couple of points. Mr. Waxman continues to try to make the case that there is nothing but smoke, and there certainly isn't the fire, and he may be correct, but Tom Schneider was contacted by Mr. O'Connor and asked to contact Mr. Ickes at the White House. Mr. O'Connor did talk to the President. The President did instruct Mr. Ickes to be contacted. Terry McAuliffe was asked about this. Mr. Fowler was asked about this. There was political operatives asking people to take a hand in the decisionmaking process.

After the fact, there is a memo or a letter that was sent out asking for money from the tribes that benefited from this from Mr. Kitto and Mr. O'Connor. Mr. O'Connor says he didn't see the letter, but nevertheless his name is on it, as was Mr. Kitto's, and on September 14, this letter was sent out, circulated to Native American clients, asking for contributions, and in the letter, it said, as witnessed in the fight to stop the Hudson dog track proposal, the Office of the President can and will work on our behalf when asked to.

Now, these were two people who were lobbying to stop this program, this new casino at Hudson, and they say very categorically, you ought to give some money to the DNC because we got the job done through political contacts at the White House and elsewhere. Now, this isn't just hyperbole, it is in writing, it is in our files here, and it has been submitted for the record. And then after that, we have $360,000 in contributions that were made. Mr. Duffy and Mr. Collier went to work for a law firm, and the Shakopees, the main tribe that benefited from this, are their clients.

Now, you know, maybe this is all coincidental, but it sure does smell a little bit, and that is why a lot of us have concerns, and that is why we are holding these hearings. So for you to say nothing is going on, that this is all baloney, just doesn't wash with a number of us.

And then, of course, Secretary Babbitt said that Ickes told him to get the decision out, that the tribes gave a half a million dollars. Now, that is what Mr. Babbitt said to Mr. Eckstein, and of course we are going to talk to Mr. Babbitt about that tomorrow.

Mr. Barr, you have the remainder of my time.

Mr. BARR. Thank you, Mr. Chairman.

I would like to ask unanimous consent to have entered in the record the court case which appears at 961 F.Supp. 1276, the *Sokaogon Chippewa Community, et al.*, v. *Bruce C. Babbitt, et al.*

Mr. BURTON. Without objection.

[The information referred to follows:]

961 F.Supp. 1276
(Cite as: 961 F.Supp. 1276)

SOKAOGON CHIPPEWA COMMUNITY (MOLE LAKE BAND OF LAKE SUPERIOR CHIPPEWA); Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; and Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin, Plaintiffs,

v.

Bruce C. BABBITT, Secretary, United States Department of the Interior; Michael J. Anderson, Deputy Assistant Secretary, United States Department of the Interior; John J. Duffy, Counselor to the Secretary, United States Department of the Interior; and George Skibine, Director, Indian Gaming Management Staff, United States Department of the Interior, Defendants.

No. 95-C-659-C.

United States District Court, W.D. Wisconsin.

March 19, 1997.

Lake Superior Chippewa Indian bands challenged decisions of Department of the Interior denying their applications under Indian Gaming Regulatory Act (IGRA) for United States to acquire in trust a greyhound racing facility for conversion into off-reservation casino. After partial summary judgment was entered, 929 F.Supp. 1165, bands sought reconsideration. The District Court, Crabb, J., held that bands made sufficiently "strong showing" of improper influence on agency decision to be entitled to extra-record discovery and examination of agency personnel.

Motions granted in part and denied in part; appeal stayed.

[1] ADMINISTRATIVE LAW AND PROCEDURE
⚿676
15Ak676
Generally, courts limit their reviews of agency decisions to administrative record, but where party can make strong showing of bad faith or improper behavior, it may be entitled to extra-record discovery and examination of agency personnel.

[2] ADMINISTRATIVE LAW AND PROCEDURE
⚿676
15Ak676
Courts should weigh limited means plaintiffs have at early stage of judicial review proceedings to uncover political impropriety in determining whether they have made "strong showing" of improper influence on agency decision, justifying extra-record discovery and examination of agency personnel.

[3] ADMINISTRATIVE LAW AND PROCEDURE
⚿676
15Ak676
Although court can require plaintiffs to present significant evidence of wrongdoing before allowing them to conduct extra-record discovery on review of agency action, it cannot require them to come forward with conclusive evidence of political improprieties at point when they are seeking to discover extent of those improprieties; short of providing direct evidence, plaintiffs need to supply sufficient evidence of improper political influence on agency decision making as to raise suspicions that defy easy explanations.

[4] ADMINISTRATIVE LAW AND PROCEDURE
⚿314
15Ak314
Although agencies are entitled to general presumption of regularity in their decision making, this does not mean that courts must refrain from drawing inferences that tend to indicate otherwise, such as would warrant extra-record discovery and examination of agency personnel; agency officials should not be able to overcome party's showing of political impropriety by simply denying all allegations of wrongdoing.

[4] ADMINISTRATIVE LAW AND PROCEDURE
⚿676
15Ak676
Although agencies are entitled to general presumption of regularity in their decision making, this does not mean that courts must refrain from drawing inferences that tend to indicate otherwise, such as would warrant extra-record discovery and examination of agency personnel; agency officials should not be able to overcome party's showing of political impropriety by simply denying all allegations of wrongdoing.

[4] ADMINISTRATIVE LAW AND PROCEDURE
⚿749
15Ak749
Although agencies are entitled to general presumption of regularity in their decision making, this does not mean that courts must refrain from drawing inferences that tend to indicate otherwise, such as would warrant extra-record discovery and examination of agency personnel; agency officials should not be able to

overcome party's showing of political impropriety by simply denying all allegations of wrongdoing.

[5] ADMINISTRATIVE LAW AND PROCEDURE ⇐676
15Ak676
Lake Superior Chippewa Indian bands made sufficiently "strong showing" of improper influence, in regard to Department of the Interior's denial of applications to acquire property for use as casino, to be entitled to extra- record discovery and examination of agency personnel, based upon evidence of contacts involving agency, opposition groups, political committee, and White House, as well as timing of decision maker's recusal, agency's changes in conclusions, and reason given for denial. Indian Reorganization Act, § 5, 25 U.S.C.A. § 465; Indian Gaming Regulatory Act, § 20, 25 U.S.C.A. § 2719.

[5] INDIANS ⇐32(12)
209k32(12)
Lake Superior Chippewa Indian bands made sufficiently "strong showing" of improper influence, in regard to Department of the Interior's denial of applications to acquire property for use as casino, to be entitled to extra- record discovery and examination of agency personnel, based upon evidence of contacts involving agency, opposition groups, political committee, and White House, as well as timing of decision maker's recusal, agency's changes in conclusions, and reason given for denial. Indian Reorganization Act, § 5, 25 U.S.C.A. § 465; Indian Gaming Regulatory Act, § 20, 25 U.S.C.A. § 2719.

[6] ADMINISTRATIVE LAW AND PROCEDURE ⇐314
15Ak314
That Department of the Interior decision maker was previously officer in American Indian group at same time as opponent of Lake Superior Chippewa Indian bands' applications to acquire property for use as casino did not require that decision maker recuse himself. Indian Reorganization Act, § 5, 25 U.S.C.A. § 465; Indian Gaming Regulatory Act, § 20, 25 U.S.C.A. § 2719; 5 C.F.R. § 2635.502(a).

[6] INDIANS ⇐32(12)
209k32(12)
That Department of the Interior decision maker was previously officer in American Indian group at same time as opponent of Lake Superior Chippewa Indian bands' applications to acquire property for use as casino did not require that decision maker recuse himself. Indian Reorganization Act, § 5, 25 U.S.C.A. § 465; Indian Gaming Regulatory Act, § 20, 25 U.S.C.A. § 2719; 5 C.F.R. § 2635.502(a).

[7] FEDERAL CIVIL PROCEDURE ⇐2655
170Ak2655
Department of the Interior's receding from position that tribal land acquisition decisions were unreviewable was irrelevant to authority of agency officials to render decision on application to acquire land for use as casino or to reopen consultation period on application, and did not warrant reconsideration of entry of summary judgment on those issues. Indian Reorganization Act, § 5, 25 U.S.C.A. § 465.

Kevin C. Potter, Brennan, Steil, Basting & MacDougall. S.C., Madison, WI, for Sokaogon Chippewa Community, Mole Lake Band of Lake Superior, Lac Courte Oreilles Band of Lake.

Robert H. Friebert, Friebert Finerty & St. John, S.C., Milwaukee, WI, for Red Cliff Band of Lake Superior.

Mark A. Cameli, Asst. U.S. Atty., Madison, WI, for Bruce C. Babbitt, U.S. Dept of Interior, Michael J. Anderson, John J. Duffy and George Skibine.

OPINION AND ORDER

CRABB, District Judge.

Plaintiffs are three Chippewa Indian tribes that submitted applications to the United States Department of the Interior in October 1993 pursuant to 25 U.S.C. § 2719 (the Indian Gaming Regulatory Act), requesting that the United States acquire in trust a greyhound racing facility in Hudson, Wisconsin for conversion into an off-reservation casino. After two years of deliberations at the local and national levels, Michael J. Anderson, Deputy Assistant Secretary--Indian Affairs for the Department of the Interior, denied plaintiffs' application in a letter dated July 14, 1995, citing the strong opposition of surrounding communities, elected state officials and neighboring tribes, the detrimental impact of the proposed casino on the profitability of the casino run by the St. Croix Tribe of Wisconsin in Turtle Lake, Wisconsin and the potentially harmful impact of the proposed casino on the nearby St. Croix National Scenic Riverway. Plaintiffs responded by filing this civil action, alleging that improper political pressure from high-level congressional and executive branch officials tainted the decisionmaking process and led to the rejection of their application.

Plaintiffs raise nine claims in their complaint, alleging that defendants violated 25 U.S.C. § 2719 and 25 U.S.C. § 465 (the Indian Reorganization Act of 1934) in a number of ways. In an order entered June 11, 1996, I granted defendants' motion for partial summary judgment on plaintiffs' third and seventh claims and held that judicial review of defendants' decision would be limited to the administrative record. Sokaogon Chippewa Community v. Babbitt, 929 F.Supp. 1165 (W.D.Wis.1996). After that order was entered, the parties agreed that the remaining issues in the case could be decided as an appeal from an administrative record on written briefs and supplemental proposed findings of fact. See Order of June 17, 1996 (Dkt.# 61).

The case is now before the court on that appeal. In addition, plaintiffs have moved for reconsideration and vacation of the June 11 order and have asked that the court consider evidence extrinsic to the administrative record and take judicial notice of several public documents. Upon reexamination of the June 11 order, I am persuaded that I erred in ruling that judicial review should be limited to the administrative record and that defendants were entitled to a protective order shielding them from extra-record discovery. At the time, it seemed that plaintiffs had not brought forward enough evidence of potential improper political influence on Deputy Assistant Secretary Anderson's decision to warrant extra-record inquiry. After reconsideration, I recognize that it is necessary to accord greater weight to the inferences that can be drawn from the evidence plaintiffs did present. Accordingly, I will grant plaintiffs' motion for reconsideration of the June 11 order with respect to that portion of the order limiting judicial review to the administrative record and granting defendants a protective order. Plaintiffs will be permitted to conduct limited discovery of agency decisionmakers before this court rules on their remaining claims.

Plaintiffs' motion to reconsider the decision in the June 11 order to grant defendants summary judgment on plaintiffs' third and seventh claims will be denied because I find no error in those assessments. Plaintiffs' initial motion to consider evidence extrinsic to the administrative record and to take judicial notice of several documents outside the *1279 administrative record will be granted. [FN1] Plaintiffs' three supplementary motions to consider evidence extrinsic to the record will be denied. I will stay a decision on plaintiffs' administrative appeal until plaintiffs have had an adequate opportunity to complete discovery and depose the relevant individuals.

FN1. Plaintiffs ask the court to take judicial notice of 1) excerpts from Senate Report (Indian Affairs Committee) No. 100-446 (1988), 2) a letter dated August 18, 1994 from Secretary of the Department of the Interior Bruce Babbitt to John Engler, Governor of the state of Michigan, concerning the application of the Sault St. Marie Tribe of Chippewa Indians to place 0.7 acres of land in Detroit in trust for the benefit of the tribe, and 3) the United States Department of the Interior's petition for a writ of certiorari in South Dakota v. United States Department of the Interior, 69 F.3d 878 (8th Cir.1995). (Dkt.# 62). Defendants have not filed any opposition to plaintiffs' motion. Accordingly, I will grant the motion.

For the purpose of deciding plaintiffs' motion for reconsideration, I rely on the undisputed facts as recorded in the June 11 order. See Sokaogon Chippewa Community, 929 F.Supp. at 1169-1172. To the extent I have considered evidence outside of those facts in evaluating plaintiffs' motion, the additional evidence will be highlighted in the opinion below.

OPINION

A. Motion to Reconsider Decision to Limit Judicial Review to the Administrative Record

1. Discussion of political pressure in June 11, 1996 order

A brief review of the June 11 order, Sokaogon Chippewa Community, 929 F.Supp. 1165, is necessary to set the stage for a discussion of plaintiffs' motion to reconsider the decision to limit judicial review to the administrative record. In analyzing plaintiffs' allegations of political impropriety, I began with the presumption that congressional and presidential oversight of agency decisionmaking is beneficial to democracy because it creates a certain level of accountability for non-elected agency officials. Id. at 1173. At the same time, however, overzealous involvement by congressional or presidential staff jeopardizes the independence of agency decisionmakers. If these decisionmakers are beholden to specific political interests, democracy suffers to the extent that agency decisions are based on purely political factors rather than on those factors set out by Congress in statutes such as 25 U.S.C. §§ 465 and 2719. Because distinctions between

permissible oversight and impermissible political pressure can be difficult to draw, courts rely on the type of agency proceeding to set ground rules for permissible contact. Id. at 1174. In quasi-adjudicative proceedings, even an appearance of bias is considered damaging to the integrity of the adjudicative process and contacts between agency decisionmakers and congressional or presidential officials are strictly taboo. In quasi- legislative proceedings, the standard is less stringent because some contact is necessary to allow the agency to gather the factual information necessary to make a fully informed decision.

The Department of the Interior's decisionmaking authority under §§ 465 and 2719 does not fit neatly into either the quasi-adjudicative or quasi- legislative categories. Sokaogon Chippewa Community, 929 F.Supp. at 1175. Nonetheless, a strict "appearance of bias" standard does not seem applicable to § 2719 decisions, which require the Department of the Interior to consider a wide range of information. Thus, interaction between the department and congressional and presidential officials concerning an application such as plaintiffs' is not improper per se. But that does not mean that it is permissible for White House staff to dictate the outcome of a decision that is delegated by Congress to the Department of the Interior. Courts must inquire whether improper legislative or executive contacts have tainted agency decisions impermissibly.

[1] Generally, courts limit their reviews of agency decisions to the administrative record. However, where a party can make a "strong showing of bad faith or improper behavior," it may be entitled to extra-record discovery and examination of agency personnel. Sokaogon Chippewa Community, 929 F.Supp. at 1177 (citing Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 420, 91 ***1280** S.Ct. 814, 825-26, 28 L.Ed.2d 136 (1971)). The case law applying the Overton Park "strong showing" standard does not make dear exactly what evidence suffices to constitute a "strong showing." All that can be divined from the cases interpreting Overton Park is the principle that a court must scrutinize each matter carefully and individually while holding plaintiff to a significant evidentiary burden. Id. at 1178. Analyzing this case in such fashion, I concluded that plaintiffs had not met their evidentiary burden and granted defendants' motion for a protective order and to limit judicial review of Deputy Assistant Secretary Anderson's decision to the administrative record.

2. Analysis of "strong showing" requirement as articulated in June 11, 1996 order

[2] The court's discussion of the permissible bounds of congressional and presidential involvement in agency decisionmaking in the June 11 order was sound, Sokaogon Chippewa Community, 929 F.Supp. at 1172-1178, but did not give full consideration to the inferences to be drawn from the evidence presented by plaintiffs. The factual inferences that were drawn in defendants' favor can be drawn in plaintiffs' favor also. When that is done, there is sufficient reason to suspect that improper political influence affected plaintiffs' application so as to allow plaintiffs an opportunity to further uncover evidence of that influence. Courts should weigh the limited means plaintiffs have at this stage of the proceedings to uncover political impropriety in determining whether they have made a "strong showing" of improper influence.

Courts grant agency decisionmakers substantial deference both on the decisions they make and the process they use to reach their decisions. This deference frees agency officials to act without the burden of having to defend their decisions later in a court of law. But deference does not mean complete absence of scrutiny. In cases in which congressional or presidential officials have made their views on an administrative decision known to the agency, courts play an important role in guaranteeing that the fine line between permissible and impermissible contact remains firm. If there are adequate grounds to suspect that an agency decision was tainted by improper political pressure, courts have a responsibility to bring out the truth of the matter. Sokaogon Chippewa Community, 929 F.Supp. at 1176 (citations omitted).

The presumption of regularity in agency decisionmaking, see Sokaogon Chippewa Community, 929 F.Supp. at 1176 (citing United States v. Chemical Foundation, 272 U.S. 1, 47 S.Ct. 1, 71 L.Ed. 131 (1926)), serves an important gatekeeping function. Because accusations of improper political influence are easy to make, courts have to be careful in determining just which of those accusations are substantial enough to merit further consideration and extra- record discovery. Id. (citing Environmental Defense Fund, Inc. v. Blum, 458 F.Supp. 650 (D.D.C.1978)). If courts are too lenient, agency officials might spend much of their time defending themselves in court against allegations brought by parties disappointed with an agency's decision.

However, if a court is never willing to scrutinize agency action, the gates become a cement wall, impervious even to legitimate claims of improper influence.

I am convinced now that plaintiffs' claim deserves to cross the threshold and that this decision will not throw open the court's gates to a vast array of political impropriety claims. Plaintiffs have adduced evidence that few litigants making similar claims will be likely to possess. I recognize that allowing depositions and extra-record discovery will impose a burden on the agency officials involved in this matter. But to the extent that floodgate and burden concerns are present here, they are outweighed by the court's responsibility to reach a just resolution of the dispute, a resolution that can be achieved only if the court has all relevant evidence before it.

[3] In the June 11 order, I ruled that plaintiffs had not made a "strong showing" of political impropriety, in large part because plaintiffs had not provided a direct link between congressional or presidential officials and Department of the Interior staff. I held that plaintiffs had established only three contacts ***1281** among members of Congress, presidential staff and the department and that those three events were insufficient to warrant extra- record discovery. Sokaogon Chippewa Community, 929 F.Supp. at 1178-80. I recognized that other political activity concerning plaintiffs' application had taken place, but gave little weight to that evidence because it was not linked to the Department of the Interior officials reviewing the application. Specifically, I stated:

> Plaintiffs suggest that the reason they have not made this link is because they have not had the opportunity to conduct further discovery, but they need more than the slight possibility of a connection between the department and [the other evidence] to secure approval of extra-record discovery.

Id. at 1179. Although a court can require plaintiffs to present significant evidence of wrongdoing before allowing them to conduct extra-record discovery, it cannot require them to come forward with conclusive evidence of political improprieties at a point when they are seeking to discover the extent of those improprieties. This is especially true given that agency officials are not likely to keep a written record of improper political contacts; the only way to uncover such contacts is by examining relevant phone records and by asking these officials about their discussions with congressional or presidential officials. Short of providing direct evidence, plaintiffs need to supply sufficient evidence of improper political influence on agency decisionmaking as to raise suspicions that defy easy explanations.

[4] I dismissed plaintiffs' attempt to raise such suspicions in the June 11 order by accepting defendants' explanations of what the evidence showed. However, defendants' take on the evidence is not the only reasonable one. Although defendants are entitled to a general presumption of regularity in their decisionmaking, this does not mean that courts must refrain from drawing inferences that tend to indicate otherwise. Agency officials should not be able to overcome a party's showing of political impropriety by simply denying all allegations of wrongdoing. Latecoere Int'l v. United States Dep't of the Navy, 19 F.3d 1342, 1365 (11th Cir.1994) (government cannot "wipe away" allegations of bias merely by denying those allegations). In evaluating whether a party has made the requisite "strong showing," a court should not overlook plausible, competing inferences that might be drawn from the evidence presented. Plaintiffs ask the court to see conspiracy in evidence that might be viewed as benign. Although I am reluctant to accept conspiracy theories of government, it would be naive to think that abuses of power never take place or that government agencies never accede to strong political pressure. Drawing all reasonable inferences from the undisputed facts in plaintiffs' favor, I believe there is a distinct possibility that improper political influence affected Anderson's decision on plaintiffs' application. A number of questions remain unanswered in this case, questions not raised in the average agency proceeding. By themselves, these questions may not arouse much suspicion; in combination they make the "strong showing" necessary for extra-record discovery.

3. Reanalysis of plaintiffs' evidence of improper political pressure

[5] The first contact between congressional staff and the Department of the Interior took place in a letter dated January 11, 1995 from Senator Paul Wellstone and the Minnesota congressional delegation to Secretary of the Interior Bruce Babbitt in which the representatives requested that Babbitt meet with the tribes opposed to plaintiffs' application. On February 8, 1995, John Duffy, Counselor to the Secretary, and George Skibine, Director, Indian Gaming Management Staff, met with these tribes, Senator Wellstone and several of the Minnesota congressional representatives. Duffy agreed to allow the tribes to submit further comments on plaintiffs' application. Plaintiffs were not notified of this meeting until six

weeks later.

In and of itself, this meeting was not improper. Duffy did not violate 25 U.S.C. § 2719 by allowing the opposition tribes to submit further information on plaintiffs' application, see Sokaogon Chippewa Community, 929 F.Supp. at 1182-83 (granting defendants summary judgment on plaintiffs' claim *1282 that Duffy violated § 2719 by allowing opposition tribes to submit additional comments on plaintiffs' application), but the fact that the department did not notify plaintiffs of this meeting and decision until six weeks later raises questions about the department's openness. Plaintiffs did have another month after learning of this meeting in which to submit additional information of their own. However, the department's six-week delay in contacting plaintiffs heightens suspicion that the department had specific reasons for not contacting plaintiffs earlier, especially considering its duty to consult with plaintiffs under 25 U.S.C. § 2719(b)(1)(A). (I do not reach plaintiffs' claim that defendants violated their duty to consult with plaintiffs). The delay may have been inadvertent, but if there were non- political problems with plaintiffs' application, the delay suggests that the department did not contact plaintiffs because it was not interested in allowing plaintiffs to remedy the problems. Alternatively, if there were political problems with plaintiffs' application, the delay suggests that the department had made up its mind already on the basis of the political factors, which no arguments provided by plaintiff could have overcome.

Several months later, on April 28, 1995, the opposition tribes met with Donald Fowler, the Democratic National Committee chairman, White House staff and staff from the offices of Senators John Kerry, Tom Daschle and Paul Wellstone. Although plaintiffs did not present any evidence originally that Fowler or any of the other officials attending the meeting contacted the Department of the Interior, I cannot assume that these tribes met with Fowler merely to socialize. They must have expected that Fowler had some ability to affect the decision on plaintiffs' application. In fact, plaintiffs have submitted extrinsic evidence that shows that Fowler has admitted to talking to someone at the Department of the Interior, as well as Harold Ickes, White House Deputy Chief of Staff for Policy and Political Affairs, about this matter. See infra Part A.4.

In a letter dated May 8, 1995, to Harold Ickes, Patrick O'Connor, a lobbyist for the opposition tribes, urged Ickes to deny plaintiffs' application. In doing so, he explained the political significance of the decision, namely that the opposition tribes were important contributors to the Democratic party and that plaintiffs were Republican supporters. I dismissed the importance of this letter in the June 11 order because plaintiffs had failed to present any evidence that Ickes conveyed these political aspects of the decision to the Department of the Interior. However, requiring such proof asked too much of plaintiffs at too early a stage. Plaintiffs did not have the ability to probe department officials to establish this link. The mere fact that the political ramifications of an agency decision were being discussed with an important White House official provides some basis for plaintiffs' desire to know whether this information was ever conveyed to the department. It is not an unimaginable leap to think that the department may have been informed of the political consequences of their decision. If officials in the Department of the Interior were made aware of these factors, that does not necessarily indicate improper political pressure. As I made clear in the last opinion, department officials are free to weigh the implicit or explicit messages of executive or congressional officials. Sokaogon Chippewa Community, 929 F.Supp. at 1180. However, if the officials were directed specifically not to approve plaintiffs' application because of these political factors, the department's decision would have to be vacated.

O'Connor's May 8 letter to Ickes not only specifies the political ramifications of plaintiffs' application but mentions that O'Connor had been advised that Fowler had discussed this issue with Ickes. (Although I did not include mention of Fowler's discussion with Ickes in the undisputed facts section of the June 11 order, I omitted it only because I did not believe it relevant at the time. The exact quote from O'Connor's May 8 letter reads, "I have been advised that Chairman Fowler has talked to you about this matter and sent you a memo outlining the basis for the opposition to creating another gaming casino in this area.") Thus, even without plaintiffs extrinsic evidence, there was reason to believe that Fowler had contacted Ickes. As will be explained later, plaintiffs extrinsic evidence shows that this contact did take place.

*1283 I note at this point that there are hearsay problems with some of the evidence that plaintiffs use to make their "strong showing." However, it would be unfair to bar plaintiffs from using certain evidence at this stage of the proceedings because of hearsay

problems. The premise underlying the hearsay rules, Fed.R.Evid. 801-806, is that evidence is more credible when it comes from the declarants themselves, but unlike most litigants, plaintiffs do not have access to the declarants and thus cannot introduce the more direct testimony at this time. Moreover, the hearsay rules and other admissibility requirements are designed to apply to the fact finding process. In situations such as this, where the question is not the merits of the parties' dispute but whether plaintiffs have made a strong showing that certain improprieties may exist, strict compliance with evidentiary admissibility rules is misplaced. After plaintiffs have had an opportunity to depose the declarants and seek to introduce their statements as fact, they will have to satisfy the hearsay rules.

What seems to be missing from the picture of political compulsion is direct involvement or contact by Ickes or other White House staff with the Department of the Interior and Deputy Assistant Secretary Anderson. But that involvement is not wholly absent. On June 26, 1995, Jennifer O'Connor of the White House Office of Political Affairs faxed a letter to Heather Sibbison in the Office of the Secretary of the Interior inquiring about plaintiffs' application. Sibbison faxed back two letters the next day, one indicating the department had decided to deny the application, the other indicating that the department was reviewing the matter with "great care."

In the June 11 order, I explained that Sibbison's swift response implied that the department had made a decision before receiving the June 26 fax and thereby undermined any implication of pressure from that fax. Sokaogon Chippewa Community, 929 F.Supp. at 1180. Although Sibbison's swift response tends to indicate that a decision had been reached before the June 26, 1995 fax was sent, the fact that she sent two letters to the White House with different messages implies that the White House had been involved in the matter already. Also, the mere fact that Sibbison sent two somewhat contradictory letters suggests that the department was aware of the need for some subterfuge in the process to allow Ickes to advance political ends. The letters seem almost to allow Ickes to chose which direction he wanted the department to take.

The more troubling implication of Sibbison's June 27 response is that it means the department had reached a decision on plaintiffs' application by that date. This undermines the department's assertion that Deputy Assistant Secretary Anderson was the one making the decision on plaintiffs' application, especially considering that on or before June 29, 1995, George Skibine had prepared a decision letter for Ada Deer, Assistant Secretary--Indian Affairs, in which the department advised that it had denied plaintiffs' application. Deer has explained that she recused herself from the matter because of contributions she had made to one of plaintiffs' leaders, Gaiashkibos. See Sokaogon Chippewa Community, 929 F.Supp. at 1181. I remarked in the June 11 opinion that Deer's late recusal was "odd," but refrained from questioning her motives. I find now that it is necessary to consider the flip side of the "odd" recusal: that Deer may have wanted to back out once she understood that higher level officials in the department wanted plaintiffs' application rejected for political purposes. It is reasonable to infer that Deer backed out because she supported plaintiffs' application and did not want to be responsible for denying it. If that were not the case, one might surmise that Deer would have recused herself from the process earlier. The combination of Sibbison's knowledge on June 27, 1995 that the application would likely be denied and the fact that a letter dated two days after that was prepared for Deer's signature makes it difficult to believe that Anderson made the decision himself. (This does not affect the determination that Anderson had the authority to deny plaintiffs' application. See Sokaogon Chippewa Community, 929 F.Supp. at 1181-82.)

On July 14, 1995, Paul Eckstein met with Secretary Babbitt on behalf of plaintiffs. Eckstein asserts that Babbitt told him that ***1284** Ickes required Babbitt to release the decision on plaintiffs' application that day. In the June 11 order, I noted that it was "just as plausible" that Deputy Assistant Secretary Anderson made the decision to deny plaintiffs' application for the reasons set forth in his July 14 decision letter as it was to assume that Ickes controlled the entire decisionmaking process. Sokaogon Chippewa Community, 929 F.Supp. at 1180. But I must give fair weight to the competing inference. The Secretary of the Interior's direct statement concerning pressure asserted on him by the White House, even if the pressure was directed to the specific release date of the decision, is reason to suspect political foul play. Although Babbitt now denies that Ickes required him to do anything, agency officials cannot stymie a party's attempt to make a strong showing of bad faith merely by denying all allegations of bias. Latecoere Int'l, 19 F.3d at 1365. It would be improper to dismiss Eckstein's assertion just because Babbitt denies it.

There is also reason to question the complete turnabout between the Indian Gaming Management Staffs release of a draft report on June 8, 1995, recommending the approval of plaintiffs' application and the department's apparently final decision by June 27, 1995 to deny plaintiffs' application. What happened during this twenty-day stretch? Secretary Anderson set forth the reasons for denying plaintiffs' application in the July 14, 1995 letter. the strong opposition of surrounding communities, elected state officials and neighboring tribes; the detrimental impact of the proposed casino on the profitability of the casino run by the St. Croix Tribe of Wisconsin in Turtle Lake, Wisconsin; and the potentially harmful impact of the proposed casino on the nearby St. Croix National Scenic Riverway. Taken at face value, those reasons seem entirely reasonable. Nonetheless, Anderson's reasons and his brief explanations become suspect as pretext when compared with the much lengthier, in-depth reports prepared by the Minneapolis Area Office and the Indian Gaming Management Staff that reached the opposite conclusion. (Again, I did not include the length of the area office and staff reports in the undisputed facts section of the June 11 order because I did not believe that information relevant to the decision. I note that the area office report spanned 32 pages. The Indian Gaming Management Staff's first report in early February 1995 was 26 pages and the second one, dated June 8, 1995, was 17 pages.) Plaintiffs point out also that in making a decision on a similar trust application filed by the Sault Ste. Marie Indians, the department issued a 29- page decision, considerably longer than the three-page decision in this case. Although the adequacy of decisions cannot be assessed with a ruler, the brevity and lack of detailed factual findings in Anderson's July 14 opinion are suspicious. Without deciding whether Anderson's decision was arbitrary and capricious, I note that a complete rejection of the Indian Gaming Management Staffs conclusions without any further factual inquiry is a reason to suggest the necessity of further inquiry.

Anderson's reasons are even more suspicious when compared to the department's May 22, 1996 memorandum and decision on an application by the Mashantucket Pequot Indian Tribe of Connecticut to take land into trust pursuant to 25 U.S.C. § 465. (Dkt.# 55). Although I stated in the June 11 order that this decision had no effect on this case, Sokaogon Chippewa Community, 929 F.Supp. at 1169, I now believe that the Mashantucket Pequot decision is relevant to plaintiffs' attempt to show political impropriety. In that case, the department approved the tribe's application even though there was strong local opposition because the tribe had made a good faith effort to address those concerns. Thus, local opposition is not always fatal to an application like plaintiffs'. Although there may be relevant distinctions between the two situations, the department's willingness in May 1996 to approve an application that evoked strong local opposition when it found such local opposition fatal to plaintiffs' application in July 1995 is disconcerting.

4. Plaintiffs' motions to consider extrinsic evidence

On August 23, 1996 and September 3, 1996, plaintiffs filed motions asking the court to admit evidence extrinsic to the administrative ***1285** record. In plaintiffs' first motion, they ask the court to consider evidence consisting of a number of newspaper articles and a press release related to plaintiffs' application. (Dkt.# 71). In their second motion, plaintiffs request that the court assess a videotape of an ABC World News Tonight segment dated August 28, 1996 that features a story concerning plaintiffs' application. (Dkt.# 78). Defendants object to these motions, contending that such evidence does not advance plaintiffs' case in any material way. Although I would grant plaintiffs' motion to reconsider without considering the extrinsic evidence plaintiffs ask the court to admit, this evidence contributes further to the conclusion that ultimate fairness in this case is served by allowing plaintiffs to conduct extra-record discovery. More recently, plaintiffs have filed three supplemental motions concerning extrinsic evidence (Dkt.# # 88, 93, 94). Because there is sufficient reason to grant plaintiffs' motion to reconsider without analyzing the arguments raised in those motions, the motions will be denied.

I would be hesitant to allow plaintiffs to rely merely on newspaper articles or television programs to make a showing of potential political impropriety. See Sierra Club v. Costle, 657 F.2d 298, 409 n. 539 (D.C.Cir.1981) (single newspaper article of strong hints of extraneous political pressure not significant enough to warrant finding of unlawful congressional interference). As discussed above, the documents raise significant hearsay problems. But given the other evidence with which plaintiffs have come forth, these submissions cannot be dismissed as fanciful journalistic speculation. I will consider them for the limited purpose of deciding whether plaintiffs have met their evidentiary burden to justify extra-record discovery. This is a very different burden from the ultimate burden plaintiffs have on proving political

interference. Although the newspaper articles would not be admissible for the purpose of proving plaintiffs' claim, they are important elements on which it is proper to rely in considering whether plaintiffs have come forward with sufficient evidence to justify extra-record discovery.

The first newspaper article comes from the July 12, 1996 Wall Street Journal. The article does not add much new information to the mix. It reports that the tribes opposing plaintiffs' application have made significant contributions to the Democratic National Committee and suggests that those contributions explain Donald Fowler's interest in meeting with those tribes. This information is much the same as that contained in the May 8 letter from Patrick O'Connor to Harold Ickes explaining that plaintiffs were Republicans and the opposition tribes were Democrats. The article cements further the political dynamics of plaintiffs' application.

The second article was published in the July 13, 1996 Minneapolis Star Tribune. The article adds a new element to the link between Donald Fowler and the Department of the Interior, reporting that Fowler admits to telephoning both Ickes and "someone in the Interior Department." Fowler may not be a member of the Clinton executive staff, but there is little question that as head of the Democratic National Committee he seeks to promote Democratic political interests. If the Department of the Interior were pressured into this decision by Fowler, it would be nearly as egregious as if it had been pressured into the decision by Ickes, a member of the more immediate White House staff.

The press release submitted by plaintiffs was issued by Senator John McCain, Chairman of the United States Senate Committee on Indian Affairs, on July 19, 1996, announcing that he had sent President Clinton a letter expressing his concern over the issues raised in the July 12 Wall Street Journal article. The press release does not contribute to plaintiffs' showing. I imagine it is comforting to plaintiffs to know that a senator is concerned that plaintiffs have been treated unfairly, but such concern does not provide any additional evidence of improper contacts.

Plaintiffs have submitted a videotape of a segment from ABC World News Tonight, dated August 28, 1996. During the program, O'Connor and Ickes are questioned about plaintiffs' application and do not respond. Plaintiffs assert that these non-responses are ***1286** adoptive admissions under Fed.R.Evid. 801(d)(2)(B). Plaintiffs contend also that the affidavits and declarations filed by Michael Anderson, George Skibine, Ada Deer and Heather Sibbison and admitted by the court Sokaogon Chippewa Community, 929 F.Supp. at 1180, are adoptive admissions. Whether these constitute adoptive admissions or not, plaintiffs will have the opportunity to question these individuals and determine whether they are indeed denying all plaintiffs' allegations.

Defendants' opposition to the admissibility of plaintiffs' extra-record submissions is tempered by the fact that in response to plaintiffs' motion for reconsideration, they have filed several of their own documents extrinsic to the administrative record, including a letter dated August 30, 1996, from Secretary Babbitt to Senator John McCain, an August 29, 1996, memorandum from Heather Sibbison to Secretary Babbitt and an August 29, 1996, memorandum from the office of the solicitors to Secretary Babbitt. Plaintiffs assert that the Sibbison memo contains critical new information supporting their allegations of political impropriety. In the memorandum, Sibbison admits that she and Tom Collier, Chief of Staff of the Department of the Interior, met with Patrick O'Connor in early spring of 1995 to discuss plaintiffs' application. According to Sibbison, O'Connor sought only to ensure that a report from the opposition tribes' financial consultants would be included in the decisionmaking record. In addition, Sibbison explains that the individuals involved in the decision were herself, Anderson, Duffy and Collier. Collier may have had very little to do with the decision. Yet it is surprising that his involvement is surfacing only at this point. It is reasonable to infer that political pressure may have been exerted against Collier and that is why he has not been included in the picture until now. Plaintiffs will be able to determine this through discovery.

In sum, I do not intend to imply that all contacts between agency officials and White House staff are improper. Such meetings are a necessary outgrowth of the manner in which the executive branch is organized. However, where as here, there is considerable evidence that suggests that improper political pressure may have influenced agency decisionmaking, it is necessary to allow extra-record discovery to uncover whether that is true. Many of the events of which plaintiffs complain could be considered innocent in and of themselves. But their combination in this case raises substantial suspicion. It will be the rare case in which a party will be able to present evidence similar to the evidence plaintiffs

have produced here suggesting that: agency officials met with opposition groups and did not notify the applicant until six weeks later, the head of the Democratic National Committee met opposition groups and shortly thereafter contacted the White House chief of staff and the agency about the application; a lobbyist laid out the explicit political ramifications of an agency decision to the White House chief of staff; the agency faxed two letters to the White House chief of staff for his signature, allowing him to determine whether to announce the department's decision or to keep it secret until a later date; the regular decisionmaker recused herself after the decision on the application was made; upper-level agency officials rejected the conclusions of the area office and agency staff without conducting further factual inquiries of their own; agency officials relied on a reason for denying the application (local opposition) that is considered insignificant with respect to a later, similar application; and the head of the agency said that he was directed explicitly by the White House chief of staff to issue the agency decision on a given date.

Plaintiffs should note that in order to succeed on their claim of improper political influence, they will need to show that the pressure was intended to and did cause the Department of the Interior's actions to be influenced by factors not relevant under the controlling statutes. See Town of Orangetown v. Ruckelshaus, 740 F.2d 185, 188 (2d Cir.1984) (citations omitted). Thus far, plaintiffs have not been able to specify exactly what was communicated between Fowler or Ickes and Department of the Interior officials, but that is primarily because they have not had the opportunity to ask these individuals about the contacts.

*1287 B. Plaintiffs' Motion to Reconsider the June 11 Order With Respect to Their Third and Seventh Claims

[6] Plaintiffs have moved for reconsideration of the decision to grant summary judgment to defendants on plaintiffs' seventh claim, that Michael Anderson lacked the authority to deny their application. According to plaintiffs, new evidence that they have uncovered concerning Anderson's relationship to the opposition tribes reveals that Anderson should have recused himself from the decisionmaking process. Plaintiffs suggest that Anderson was the Executive Director of the National Congress of American Indians in 1992 at the same time that Gaiashkibos was president of that group. Plaintiffs argue that if assistant secretary Deer recused herself because of her $250 campaign donation to Gaiashkibos, Anderson should have done the same because of his past links to Gaiashkibos.

The facts presented do not show that Anderson's relationship to Gaiashkibos imposed any binding responsibility on Anderson to recuse himself. See 5 C.F.R. § 2635.502(a) (decisionmaker should not involve himself in matter in which he knows a person with whom he has "covered relationship."). It does not appear that Anderson had a "covered relationship" with Gaiashkibos at the time of the decision. The recusal decision was up to Anderson and he chose to participate.

[7] Plaintiffs argue that the court should vacate its June 11, 1996 decision granting defendants summary judgment on plaintiffs' third and seventh claims because the department has admitted that it must base its decisions under 25 U.S.C. § 465 on the specific factors contained in 25 C.F.R. § 151.10. See Department of the Interior's Petition for a Writ of Certiorari in United States Dept of the Interior v. South Dakota, cert. granted, 65 U.S.L.W. 3291 (Oct. 15, 1996). In the department's petition, it states:

> The Department initially took the view that [§ 465 land acquisition decisions] are unreviewable because they are 'committed to agency discretion by law.' ... The Department has since concluded, however, that although Section 5 confers discretion, the exercise of that discretion is not entirely unreviewable. The Department of the Interior has accordingly determined (and the Department of Justice agrees) that a decision to acquire land in trust under Section 5 of the IRA is subject to judicial review under the APA, see 5 U.S.C. § 706(2), taking into account the factors identified in the Secretary's regulations as relevant in making such decisions.

The Department's change in approach does not affect the decisions on plaintiffs' third or seventh claims. I have explained already that Michael Anderson had the authority to make a decision on plaintiffs' application. Any change in the factors on which Anderson had to rely would not affect his decisionmaking authority. The department's shift has no effect on the grant of summary judgment on plaintiffs' claim concerning John Duffy's authority to "reopen" the consultation period under § 2719. Duffy was concerned that the department did not have sufficient information and believed these tribes could provide that information. The information gathered from these tribes could have

been relevant to an analysis of the 25 C.F.R. § 151.10 factors.

ORDER

IT IS ORDERED that plaintiffs' motion for reconsideration of the opinion and order entered herein on June 11, 1996 (dkt.# 72) is GRANTED with respect to that part of the decision granting defendants a protective order and limiting judicial review to the administrative record. The motion for reconsideration is DENIED in all other aspects. Plaintiffs first two motions to consider extrinsic evidence (dkt.# # 71, 78) and its motion requesting that the court take judicial notice (dkt.# 62) are GRANTED. Plaintiffs supplemental motions to consider extrinsic evidence (dkt.# # 88, 93, 94) are DENIED as moot. Plaintiffs' appeal of defendant Michael J. Anderson's decision of July 14, 1995 is STAYED until plaintiffs have had adequate opportunity to conduct discovery on their allegations of political impropriety. A hearing before United States Magistrate Judge Stephen L Crocker will be held no later than April 11, 1997 to determine the scope of discovery to be undertaken in this *1288 case and to discuss scheduling matters. The clerk of court is instructed to contact the parties to arrange a time for the hearing.

END OF DOCUMENT

Mr. BARR. Have either of you gentlemen testified in that case?

Mr. COLLIER. I have not.

Mr. BARR. Mr. Duffy?

Mr. DUFFY. I have not testified, I have submitted an affidavit, which was, I think—well, I gave an affidavit to the Justice Department, I think, that has been submitted in some fashion in the case.

Mr. BARR Mr. Collier, have you submitted an affidavit or been deposed or in any other way submitted a statement to the court in that case?

Mr. COLLIER. I spoke to counsel from the Department of Interior, I believe, but I don't think I ended up submitting anything.

Mr. BARR. OK. I am going to read briefly from the lead into that case.

Lake Superior Chippewa Indian bands challenge decisions of Department of the Interior denying their application under the Indian Gaming Regulatory Act, IGRA, for United States to acquire in trust a greyhound racing facility for conversion into off-reservation casino. After partial summary judgment was entered, 929 F.Supp. 1165, bands sought reconsideration. The District Court, Judge Crabb, held that bands made sufficiently strong showing of improper influence on agency decision to be entitled to extra record discovery and examination of agency personnel.

Now, the case is still currently an active one. It has not been tried. As we can see from this document, this official opinion, it is still in the discovery stage, but the reason I think in large part, following on what the chairman indicated, that we are here today is more than simply any singular or collective opinion on this side that, you know, something was wrong.

This is a U.S. District Court judge, and she has issued a fairly lengthy opinion here, and toward the end of it, on page 10 of the written opinion that we have here, she indicates appropriately that she does not intend to imply that all contacts between agency officials and White House staff are improper. She says, such meetings are a necessary outgrowth of the manner in which the executive branch is organized. However, whereas here, there is considerable evidence that suggests that improper political pressure may have influenced agency decisionmaking, it is necessary to allow extra record discovery to uncover whether that is true. Many of the events of which plaintiffs complain can be considered innocent in and of themselves, but their combination in this case raises substantial suspicion.

That is not my opinion, that is not the opinion of the chairman or Mr. Souder or anybody up here; that is an opinion of a U.S. District Court judge, based on what we all can, I think, presume would be an extensive and very professional review of a very extensive record thus far in the discovery of that case.

She goes on to indicate that it would be a rare case in which a party will be able to present evidence similar to the evidence plaintiffs have produced here, suggesting that—and then I will go on when I have a little more time. But what she is saying is there are some very unusual things that appear, based on the record in this case, to have happened, and that is why it is of concern to us, and I will go into this and another matter in a little more detail when I have my 5 minutes.

Mr. BURTON. Mr. Barr, we will come back to you right after the next person to question.

Mrs. Maloney.

Mrs. MALONEY. Thank you, Mr. Chairman.

I would like to really ask both Mr. Collier and Mr. Duffy the same question. I would like to ask you, during really Secretary Babbitt's tenure and really during the time that both of you worked at the Department, is it a true statement that the Department policy was to give great weight to the views of local community and local politicians; was that the view of the Department, to listen to what the local people had to say?

Mr. DUFFY. Absolutely, yes.

Mrs. MALONEY. Mr. Collier, would you answer, too?

Mr. COLLIER. I agree with that, yes.

Mrs. MALONEY. Why was this important to the Department, to listen to elected officials, to rely on referendums from the people in the community, of various levels of Federal, State and city; why was that so important to the Department?

Mr. DUFFY. Well, I was trying to encourage us, Congresswoman, not to rely on referendums, but to focus our attention on the response of the local elected officials, which I felt was the best test of what local public opinion would be or where the local community was in terms of support or opposition to a particular item.

Local community was important because there is an overriding political concern, and by political concern I mean that in the best sense, having to do with politics and elected officials, that the Indian Gaming Regulatory Act needs the support of Americans throughout the country. Indians do not do well as a general matter when they come up against the majority of non-Indians, and where their interests are in conflict, Indians tend to lose.

We didn't want the Indian Gaming Regulatory Act to be in conflict with local Americans. Most local Americans, from my own personal feeling, and uninformed and unofficial opinion polls, support Indian gaming, but they want to have some say if it is not going to be on a reservation, and I think that is what we were trying to get at. We wanted to listen to people when the gaming was off reservation because it is only appropriate that people should not be forced, as the Secretary has said, to have a gaming casino shoved down their throat.

Mrs. MALONEY. Was there an unusual degree of opposition to this particular project?

Mr. DUFFY. Well, in my focus of attention, and I believe the Department's focus, there was strong opposition across the board here, and the local community, as I said before, the local officials were against it.

Mrs. MALONEY. Did Secretary Babbitt ever pressure you to take a particular position with respect to the trust acquisition of the St. Croix Meadows Greyhound Racing Track, Mr. Duffy; did he ever pressure you?

Mr. DUFFY. No, I don't think he ever expressed a view on the specific issue, the specific application. I don't believe he had any view, and he was not involved in it.

Mrs. MALONEY. So not only did he not pressure you, he didn't express a view.

Mr. DUFFY. He simply wasn't involved in it. I did have a conversation with him some months before, a long time before, in which we talked about the type of policy we ought to be putting into effect in the Department, and that is where the "don't shove it down their throat" remark came, but on this particular application he was not involved.

Mrs. MALONEY. So are you aware of the Secretary exerting any pressure on Department employees as to how the decision could come out?

Mr. DUFFY. No, I'm not.

Mrs. MALONEY. So he not only didn't affect you, he didn't pressure any other employees?

Mr. DUFFY. No.

Mrs. MALONEY. Did the Secretary ever indicate to you that he was receiving pressure from the White House, the Democratic National Committee or the Clinton/Gore campaign on this application?

Mr. DUFFY. No.

Mrs. MALONEY. And the Secretary never told you that you should ensure that the application was rejected; is that correct?

Mr. DUFFY. No, he never told me anything about how the application should be decided.

Mrs. MALONEY. I would like to ask both of you, Mr. Collier and Mr. Duffy, did any of your superiors—you testified about the Secretary—but any of your superiors ever tell you to take a particular position on this matter because of a tribe's campaign contributions or because of any other reason?

Mr. DUFFY. Not because of a tribe's campaign contributions, no.

Mrs. MALONEY. Did any of your superiors ever tell you that any particular tribe of Indians was to be given deference because of their campaign contributions?

Mr. DUFFY. No, absolutely not.

Mrs. MALONEY. Did either of you ever pressure George Skibine, the 20-year career employee, to make a particular determination with respect to this matter?

Mr. DUFFY. I didn't.

Mr. COLLIER. Nor me.

Mrs. MALONEY. Did you Mr. Collier?

Mr. COLLIER. No.

Mrs. MALONEY. Did either of you ever ask George Skibine or anyone else on the staff to make a particular determination with respect to this matter?

Mr. DUFFY. Well, Congresswoman, I have participated in the decisionmaking process, and I did urge that we use section 20, so to that extent I have to tell you that I talked to Mr. Skibine and recommended an approach. But as to the initial decision, that was Mr. Skibine's.

Mrs. MALONEY. But actually, if you did disagree with the legal reasoning on which the Gaming Office based its determination, would there have been anything illegal, unethical or inappropriate in directing them to make a change?

Mr. DUFFY. There would have been something inappropriate—not inappropriate, but I would not have had the authority to direct him to make the change. He did not report to me. I was not in line authority with Mr. Skibine.

Mrs. MALONEY. But isn't it part of your job to review documents prepared by the Interior Department staff and to make changes based on your knowledge of the law?

Mr. DUFFY. It is more of the Solicitor's responsibility to make changes based on the law. It is my responsibility to provide recommendations with respect to what I think is appropriate policy.

Mrs. MALONEY. And I know my time is up. I would just like to ask one last question. Do you believe that campaign contributions determined the outcome of this matter?

Mr. DUFFY. I know they did not determine the outcome of this matter because I was watching the process, monitoring the process. I saw how the process was made, and I know there was no influence by campaign contributions on this process.

Mrs. MALONEY. Thank you very much.

As I have said before, Mr. Chairman, we have a case where we had opposing sides, both of whom hired lawyers, lobbyists, both of which made campaign contributions, but we have had testimony from career professionals, from all types of people, that have said that it in no way influenced their decision. And I come back to the theme that really the President had last night in his State of the Union, that we should just ban soft money contributions, then we would never have any discussion of any impropriety because everybody could not make large contributions. You would be limited to $1,000.

Mr. BURTON. The gentlelady's time has expired.

Mr. Barr, you are recognized.

Mr. BARR. Thank you.

Mr. Chairman, I think one of the nice things about court opinions is they stick to the points. They don't go on and on about extraneous matters, and what the judge in this case has done—and I keep coming back to it because I think it is very important, because there is a constant effort in these hearings and every other time we have hearings to trivialize this or pull us off on tobacco or campaign finance reform or something. Our witnesses today are lawyers. I am sure that they have very strong regard for the opinions of courts, and what the court is suggesting here is that based on substantial evidence that it reviewed, there is a very serious question and suspicion that has been raised. That obviously is not important, has no importance whatsoever to the folks on the other side.

Court opinions do have importance, and I respect them, and I know these witnesses do, and what the court is listing here, such things as agency officials meeting with opposition groups and not notifying the applicant, the head of the DNC meeting with opposition groups and shortly thereafter contacting the White House Chief of Staff and the agency about the application, raised suspicions.

Upper-level agency official rejecting the conclusions of the area office and agency staff without conducting further factual inquiries of their own; agency officials relying on a reason for denying the application that is considered insignificant with respect to a later similar application; and the head of the agency saying he was directed explicitly by the White House Chief of Staff to issue the agency decision on a given date. Those are not things that a court

has made up, those are not things that a politician has made up, those are statements placed very seriously and very deliberately in a court proceeding that has to do with an awful lot of information that we have not even gone into here today, and that is why this is important.

Let me ask a couple questions, Mr. Collier, about something a little bit different, but something about which I know you are familiar.

We have some documents here regarding Mr. Hubbell and Mrs. Hubbell. On April 5—and these, I believe, were documents you provided to Senator Faircloth, both documents regarding meetings that you had, Mr. Collier, with Mr. Hubbell; and then a chronology of various matters, discussions, and telephone conversations with regard to bringing Mr. Hubbell's wife back from an extended leave of absence, in 1994 and 1995.

Did you indeed have lunch, which according to Mr. Hubbell's appointment calendar took place on April 5, 1994, with Mr. Hubbell?

Mr. COLLIER. I don't recall the specific date or the specific lunch, but I have had lunch before with Mr. Hubbell, yes.

Mr. BARR. And it wouldn't surprise you if indeed that entry on his log was a correct one?

Mr. COLLIER. I have no reason to question that entry, Congressman.

Mr. BARR. And then again on October 12, 1994, and the entry is a little bit more difficult to read on that, would that have been a day—a likely day on which you had another meeting with him?

Mr. COLLIER. I have no recollection of—I just can't help you, Congressman. My name appears on a calendar.

Mr. BARR. OK. Are you saying in April 1994, you have no reason to suspect that you didn't have lunch with him on that day?

Mr. COLLIER. If that is what this calendar says.

Mr. BARR. You don't recall at all October 12?

Mr. COLLIER. That's right, I just don't recall.

Mr. BARR. What was the reason that Mrs. Hubbell took an unpaid leave of absence from her Interior Department position in March 1994?

Mr. COLLIER. She wanted to spend more time with her children.

Mr. BARR. OK. What was her grade level at that time when she left?

Mr. COLLIER. Congressman, I don't recall her grade level at all.

Mr. BARR. Was it a fairly senior position?

Mr. COLLIER. I don't recall at all, I'm sorry.

Mr. BARR. When she game back in February 1995, about a year later, there was some discussion about exactly what work she would be doing. Did she, in fact, come back to the same job she left, or was she given a different job?

Mr. COLLIER. I'm not certain. I think she was given a different job, Congressman.

Mr. BARR. I think that is probably accurate.

Do you know what grade level she was brought back in at?

Mr. COLLIER. I believe she was brought back at the same grade level, Congressman.

Mr. BARR. Were there discussions that you had with Mr. Hubbell, Mr. Hubbell, that is, during this period of time, that is from

April 1994, which is when he left the Department of Justice, until his wife was rehired about a year later; did you have conversations with him during that period?

Mr. COLLIER. Are you asking whether I had conversations with him about his wife's job status, Congressman, or are you asking me if I had conversations with him about anything?

Mr. BARR. That.

Mr. COLLIER. I have probably, in my life, had two or three conversations with Webb Hubbell. I don't recall when they occurred.

Mr. BARR. There being so few, you might have a pretty specific recollection of what was discussed. Could you tell us what you discussed at the meeting that occurred on or about—and the date isn't that important—April 5, 1994?

Mr. COLLIER. I have no idea what we talked about.

Mr. BARR. Do you recall what you talked about in any of your meetings with Webb Hubbell?

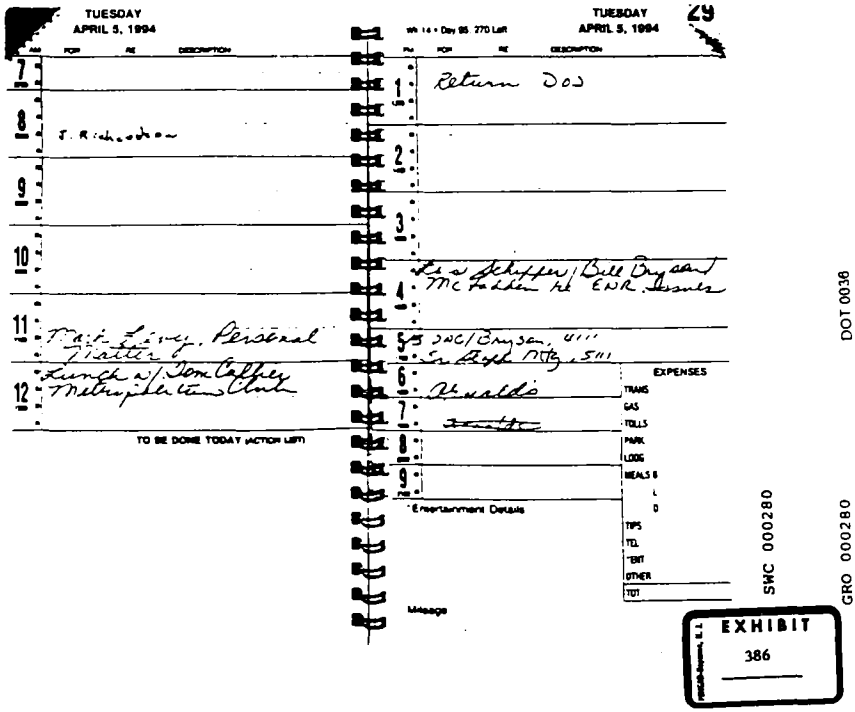
Mr. COLLIER. I don't.

Mr. BARR. Even though there were only a few of them?

Mr. COLLIER. Even though there were only a few, Congressman.

Mr. BARR. OK. Thank you.

[Exhibit 386 follows:]


TUESDAY
APRIL 5, 1994
TUESDAY
APRIL 5, 1994
29
Return DOJ
S. Richardson
Mark Levy. Personal Matter
Lunch w/ Tom Caffrey Metropolitan Club
Lisa Schiffren / Bill Bryson
McFadden re EWR Issues
DNC/Bryson, 4111 Fairfax Pkwy, 5111
Reynolds
TO BE DONE TODAY (ACTION LIST)
Entertainment Details
Message
EXPENSES
TRANS
GAS
TOLLS
PARK
LODG
MEALS
TIPS
TEL
ENT
OTHER
TOT
DOT 0036
SWC 000280
GRO 000280
EXHIBIT
386

DOT 0114

EXHIBIT
387

CHRONOLOGY OF EVENTS

March 17, 1994 -- Suzy Hubbell (SH) takes unpaid leave of absence

March 94 to Jan 95 -- TC (Tom Collier) and SH talk several times. Friendly chats. In one of the conversations (probably November), SH tells TC that if it is going to make it tough on him for her to return, she'll forget it. He says no -- he wants her back.

Early Jan, 95 -- SH calls TC, tells him she's ready to return. (TC phone log contains incoming calls from SH on 1/10 and 1/11.) He says when? She says February 1st. He says fine.

During this period of her leave of absence, SH says she frequently talked with Bruce Lindsey about all sorts of things. They are very close friends. She told him she wanted to come back but to a defined job. Basically, he listened as a friend, no commitments made and none was asked. She also had some of the same conversations with Marsha Scott (Deputy Assistant to the President) who is also a close friend.

Jan 95 (BJ Thornberry's phone log shows incoming call from Craig Smith on 1/17/95) Craig Smith at WH Personnel calls BJ Thornberry (BJ). Says SH wants to return and was there a problem. BJ's impression was that he was checking to see if there would be a problem with our Schedule C limits if she did. BJ said no, since SH was only on a leave of absence, we had saved the slot for her. (TC feels the slot was still encumbered since she was only on a leave of absence.) Craig said she wanted a well-defined job. BJ asked Craig if she would stay at the same level. Craig said yes.

Jan 95 - BJ and TC discussed the SH situation. TC said he'd meet with SH. Asked BJ for staff needs -- ideas for jobs for SH. BJ sketched out five or six options including the external affairs position that she eventually took.

Jan 18 -- TC talked to SH. BJ not there. TC laid out possibilities. Told her to talk to BJ about what she was interested in.

Jan 95 -- TC calls John Angell at White House (Deputy to the Chief of Staff) to give him a heads up that SH is returning. TC explained that he intended to bring SH back unless the chief of staff's office decided that for some reason, he should not do so. TC's phone log indicates this conversation probably took place on January 20th.

Jan 95 -- TC called Angell again because he had not heard back from him. TC also saw Angell at a meeting and asked him again. Angell said he'd get back to him.

Jan 24 - SH came in to see BJ. Said she preferred the external affairs job. BJ said fine, when can you start? SH said February 6th. BJ said OK.

EXHIBIT
388-1

BJ told TC that SH would start Feb. 6th. TC said we needed to get go ahead from Chief of Staff's office. TC said he'd get the go ahead.

Feb 3 - SH comes by DOI to meet external affairs staff.

Feb 6 - SH came to staff meeting at 8:45 a.m.. BJ told TC she was there. TC said Chief of Staff's Office hadn't given go ahead yet. BJ pulled SH out of staff meeting. BJ and SH go to BJ's office. (At this point BJ and SH make a series of calls to various contacts at the White House; the following calls and return calls may be out of sequence but these were the contacts that were made.) BJ called Angell. Angell is not available. SH calls Marsha Scott once or twice but does not talk to her that morning. (She may have talked with her that afternoon from home.) SH calls Bruce Lindsey, but he is not there. (SH wasn't calling him for approval -- just to see if he could find out what happened to the notice to WH and whether they had signed off.) When Bruce wasn't there, SH calls Erskine Bowles. Both she and BJ spoke with him. BJ explains to him in some detail the history of SH's employment with DOI and our desire to have her return to duty. Bowles told BJ he'd get back to her but didn't think there would be any problem. Bruce calls back. BJ got on the phone with Bruce; BJ explained that SH wanted to come back, that we wanted her back, and that the purpose of the call was to make sure that no one had problems with her return to duty. Lindsey said he'd check and get back; no one remembers his calling back and there is no record of a return call. SH goes home. Bowles calls BJ back that afternoon -- says it's okay for SH to return but they thought there should be a recusal to be sure SH has no contact with the Justice Department or with anyone on the ongoing independent counsel investigation. BJ said okay.

BJ talks to Ed Cohen (EC) to ask him to work on the recusal. EC called WH Counsel's office. Talked to Clarissa Cerda. Told her Bowles had wanted a recusal for SH from any DOJ matters or from anyone on the independent counsel investigation. Cerda said she would talk to Beth Nolan (also WH Counsel's Office).

BJ calls SH to tell her Bowles wanted a recusal. SH agrees with stipulations orally. BJ tells SH she should come to work the next day.

Feb 7 - 10 -- EC exchanged calls with Beth Nolan. EC spoke with Kathy Whalen on 2/10. EC checked with Gabe Paone, DOI Ethics Officer, on what DOI policy was on recusals, specifically whether they had to be written. Paone explained that the preference was for them to be written but that the OGE Ethics regulations do not require them to be written. 5 CFR 2635.401 (c)(1) and (2). Paone explained that in a situation when a matter was unlikely to come before an employee, we often rely on an oral recusal until something specific does arise. EC talked to SH. EC decided that an oral recusal was appropriate in these circumstances. SH recused herself orally from any contact (other than social) with DOJ and from anyone regarding the independent counsel investigation.

EXHIBIT
388-2

Mr. BURTON. Let's see who is next down there. Mr. Kanjorski.

Mr. KANJORSKI. Let me just take 1 second, Mr. Chairman, if I may.

I know my colleague on the other side talked about the decision of the District Court, Western District of Wisconsin. Maybe we should call the judge in that case. I don't know what she would offer other than she had a transcript before her.

As I understand that case, there was a limiting order signed by the judge restricting the amount of discovery that could be taken by the petitioner, the disappointed party in this case, the dog track owner, and that upon reconsideration, the court decided that there were a lot of unanswered questions, and that if you took the inferences all in favor of the defendant, you could arrive at one conclusion. If you took those same inferences all in favor of the plaintiff's side, you can arrive at another decision. And the court merely concluded that based on some of the facts, some of the allegations, that it would be unreasonable not to allow extra discovery procedure to be granted to the plaintiff in the case that otherwise would be prejudiced and potentially subject to summary judgment, which means, in the Federal district court, that you just don't get a chance to proceed and prove your case.

The position that Mr. Barr has taken in asserting statements in the record are out of context, are really disingenuous from the standpoint that I don't believe this judge has arrived at any conclusion, and this is an intermittent decision to allow the case to proceed in an orderly fashion, to allow extra discovery beyond the administrative record, that is all it involves. In seven instances, and two sustaining the court's original position that there is no reason to allow any further discovery, there was a failure of evidence, or allegation, which dismissed and allowed for summary judgment. And may I say that this was concluded, as best I can recollect, sometime in April 1997, which is what, almost a year ago, certainly precedes this hearing. And if we have any more evidence or facts, why not have live characters come in and testify rather than doing a disservice to all of us to attempt to use a Federal district court judge as a witness by citing or quoting out of context some of her decision or conclusions that she arrived at to attain fairness.

So on the basis of that, I only hope we can wind this hearing down. I don't want to take any more time, Mr. Chairman. I yield back the balance of my time. I hope we don't have any more phantom witnesses.

If I may, I will yield to Mr. Barrett.

Mr. BARRETT. Mr. Chairman, as we come to the close here of this hearing today, some of the protestations from the Republican side about fund-raising make me think of the scene in Casablanca, where Claude Rains is shocked; he is shocked that there is gambling in Casablanca. Mr. Chairman, you and other Members seem to be shocked that there is fund-raising actually appearing in Washington, DC. But I would venture to guess, Mr. Chairman, that there has been not one, not two, not three, but hundreds if not thousands of letters that have gone out from lobbyists on behalf of yourself and Members on your side following action by this Congress, following action by you or other Members, explaining to clients the good work that you have done, and asking them to contrib-

ute to your campaign. And I would also venture to guess, Mr. Chairman, you have accepted those campaign contributions and felt you were doing your duty; that you had done the right thing, and that they were participating in the political process.

So I think that this is instructive to the American people, because I think that this is in some ways a garden variety issue and how Washington works. And a decision is made, a decision was made on the merits, and, yes, campaign contributions were made following a decision. But to suggest that something is wrong here, when we have the overwhelming evidence that the local community, from the mayor, the town council, every single elected Member of Congress who took a stand on this issue in the State of Wisconsin, every single Member of Congress from Minnesota who took a stand on this issue, that this decision was in agreement with that.

And the only parallel I can draw on the other side is last year when President Clinton made the designation for the State of Utah for the wilderness area and the howls that went up from the congressional Members that he didn't listen to them. In this case, the Department of Interior did listen, and it listened and it made the right decision, and I am glad that this decision was made.

And I will yield back my time to Mr. Kanjorski, and if he doesn't need it, I will yield back to you, Mr. Chairman.

Mr. BURTON. Do you wish to use your 5 minutes, Mr. Barrett?

Mr. BARRETT. I will pass.

Mr. BURTON. Thank you.

Let me just say the metaphor you used regarding Claude Rains in Casablanca is near and dear to my heart. You have used it before. I hope you use it again. It always brings back fond memories.

Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman.

Mr. Duffy, I have a couple of questions about your employ at the Department of Interior. I chair the House Civil Service Subcommittee dealing with Federal employees, Federal employment and issues of that sort.

When did you leave the Department?

Mr. COLLIER. Are you addressing Mr. Duffy?

Mr. MICA. Yes.

Mr. DUFFY. I left the Department in July 1996.

Mr. MICA. And when did you join the other firm?

Mr. DUFFY. Right thereafter.

Mr. MICA. And when did you get involved in this particular issue representing the Indian interests?

Mr. DUFFY. I think I said it was several months later.

Mr. MICA. Several months later.

And are you aware that there is a restriction, in fact, on employment for Federal employees in most instances, and you found that there was an exclusion in representing, I guess, Indian tribes; is that the case?

Mr. DUFFY. There is a statute which authorizes the representation of Indian tribes, overriding the other ethical statutes.

Mr. MICA. Well, I chair the Civil Service Subcommittee. I wasn't aware of that loophole or that exclusion.

This has certainly caused at least the appearance of an improper relationship, a potential conflict of interest, or cast aspersion because some Federal employees who leave, who represent certain interests, can immediately be retained in the employ of a tribe. Wouldn't you think that would be a perception outside?

Mr. DUFFY. I really don't know what the perception outside would be. I mean, I can say this is not a loophole, this is a congressional policy.

Mr. MICA. Right, but it was set by Congress.

Mr. DUFFY. I know.

Mr. MICA. And permitted. But don't you think that this creates problems like what we have seen here, or at least the appearance of problems?

Mr. DUFFY. I don't think so.

Mr. MICA. I honestly never heard of the exemption. I wasn't here when they wrote the law, and it is something I think that we should have everyone who works for the Federal Government, with an agency, who has dealt with issues, recuse, I guess is the term, themselves for a year, would you agree with that?

Mr. DUFFY. Let me make sure we understand this. I am not working on any issue for the Shakopees that I worked on at the Department of Interior. That is not the issue here, all right, and that is why, in my view, I don't see the appearance of impropriety. I mean, the connection that is trying to be made here, with improper conduct on my part, which I frankly am strongly upset about, is that I joined a law firm which already had a client, which, at some point in time, was interested in a decision that I participated in but didn't make. Now, with great respect, Congressman, I don't see the appearance of impropriety here.

Mr. MICA. Well, again, I think this hearing raises some questions about that law and possibly other attorneys that are in the—who serve in government and go out and work in other areas. This is a little bit more difficult, because I guess when you work just with Indian issues, you become an expert in that field, and you go out and expect to make a living at it in some of your area of expertise.

Do you have any suggestions for any modifications to the law?

Mr. DUFFY. I don't, Congressman.

Mr. MICA. Mr. Collier, I think you have a similar situation. Do you have any suggestions, or do you think the law is fine the way it is?

Mr. COLLIER. Congressman, I respectfully believe that is really an issue for your side of the table rather than my side of the table.

Mr. MICA. Well, again, I am not saying anyone has done anything wrong. You have complied with the law, it appears, the letter of the law, that Congress set those terms, and my question is, you have been through an experience here, and maybe we should go back and revisit that law, maybe we should make some changes. Our job, and this isn't just to beat you guys up, and we are not going to indict anybody, we don't take criminal action, we review what has taken place. We review the laws that Congress has passed, we investigate what took place, and here we have a situation that has cast some cloud. Do you have any recommendations to me for improving that, and in a positive vein? I am not here to roast you yet.

Mr. COLLIER. Congressman, I appreciate the spirit of your question, but I don't have any suggestions for you.

Mr. BURTON. The gentleman's time has expired.

Let me say in closing, first of all, we thank the witnesses for their patience. They have been sitting here all day along with their counsel. I know it has been a long day for you, so we appreciate your patience.

I would like to say to Mr. Barrett down there, we have a bill that will close that, quote/unquote, "loophole" regarding Indian tribes having the ability, and you indicated you would be interested in cosponsoring it.

Mr. BARRETT. I am interested, and I will take a look at that.

Mr. BURTON. I will be happy to give it to you and maybe have you cosponsor it.

With that, we will recess until about 10 o'clock tomorrow morning. Thank you, gentlemen.

[Whereupon, at 5:41 p.m., the committee was adjourned.]

THE DEPARTMENT OF INTERIOR'S DENIAL OF THE WISCONSIN CHIPPEWA'S CASINO APPLICATION

THURSDAY, JANUARY 29, 1998

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Dan Burton (chairman of the committee) presiding.

Present: Representatives Burton, Hastert, Morella, McHugh, Horn, Mica, Davis of Virginia, McIntosh, Souder, Shadegg, Sununu, Pappas, Barr, Miller, Waxman, Wise, Kanjorski, Sanders, Maloney, Barrett, Norton, Cummings, Kucinich, Tierney, and Turner.

Staff present: Kevin Binger, staff director; Richard Bennett, chief counsel; Judith McCoy, chief clerk; Teresa Austin, assistant clerk/calendar clerk; William Moschella, deputy counsel and parliamentarian; Will Dwyer, director of communications; Ashley Williams, deputy director of communications; Dudley Hodgson, chief investigator; Barbara Comstock, chief investigative counsel; Dave Bossie, oversight coordinator; James C. Wilson, Robert Rohrbaugh, and Uttam Dhillon, senior investigative counsels; Bill Hanka, investigative counsel; Robert Dold and E. Edward Eynon, investigative attorneys; Jason Foster and Elliot Berke, investigators; Robin Butler, office manager; Carolyn Pritts, investigative administrative assistant; Barrett Davie and Mark Sylvester, investigative staff assistants; Phil Schiliro, minority staff director; Kenneth Ballen, minority chief investigative counsel; Michael Raphael, David Sadkin, Michael Yang, and Michael Yeager, minority counsels; Rick Jauert, minority professional staff member; Ellen Rayner, minority chief clerk; and Jean Gosa and Amy Wendt, minority staff assistants.

Mr. BURTON. The committee will come to order. You may be seated right now, Mr. Secretary, if you don't mind.

Good morning. A quorum being present, the Committee on Government Reform and Oversight will come to order. Today, we will continue the hearings into allegations of political pressure on the Interior Department to deny an application made by three Indian Tribes in Wisconsin to take land in trust for gambling purposes.

This is our fourth and final day of hearings into allegations of political pressure on the Interior Department to reject an application by three poor Wisconsin tribes to open a casino in Hudson, WI.

Our final witness and our only witness for today is Secretary Bruce Babbitt. Mr. Secretary, thank you for being with us today.

Secretary BABBITT. Mr. Chairman, good morning.

Mr. BURTON. Several of my colleagues on the Democratic side commented yesterday that they have seen no evidence of political interference in this decision. Member after Member on that side of the aisle said there was not one shred of evidence indicating that politics had been brought to bear.

Unfortunately, there is evidence. There is sworn testimony. The allegations against Mr. Babbitt were not made by me. They were not made by anyone in the Republican party. They were made by one of Secretary Babbitt's best friends. They were made by Secretary Babbitt's former law partner and campaign manager, a longtime Democrat, Mr. Paul Eckstein.

Paul Eckstein went to see Secretary Babbitt the day the casino application was rejected. He asked for more time for his clients, the Wisconsin Chippewa tribes, to address whatever objections the Department had. Secretary Babbitt told him that he could not give him more time because Harold Ickes wanted the decision out that day. Mr. Eckstein contends that Secretary Babbitt went on to ask if he knew how much these Indian tribes had given to the Democratic party. Apparently, Mr. Eckstein didn't know, so Secretary Babbitt told him it was in the neighborhood of a half a million dollars.

Secretary Babbitt has, by his own admission, lent credibility to Mr. Eckstein's story by changing his own account of that meeting so radically. At first, he denied ever invoking Harold Ickes' name or mentioning donations by Indian tribes. Then, a year later, he reversed course. He said that he did invoke Harold Ickes' name, but that he was lying to his old friend to get him out of his office.

Did Mr. Eckstein's allegations have credibility? They apparently have enough credibility for the Justice Department to be close to seeking an independent counsel. Reuters and CNN quoted the "Justice Department officials" on January 19th as saying that it was virtually certain that the Attorney General would seek an independent counsel in this case. And we all know that this is not an Attorney General who seeks independent counsels at the drop of a hat.

I have a copy of Secretary Babbitt's opening statement with me. In it, the Secretary says that he never had any contact with Mr. Ickes on this issue. Two senior members of his staff who testified yesterday, said that they never had any contact with Mr. Ickes. Apparently, as the Secretary was attempting to get Mr. Eckstein out of his office, he pulled Mr. Ickes' name out of thin air. But why Harold Ickes? Why not Leon Panetta or George Stephanopoulos or the President? Why invoke the name of Harold Ickes?

We have a few clues. Perhaps the fact that Harold Ickes' assistant called Secretary Babbitt's assistant three times about this application had something to do with it. It is also an interesting coincidence that Mr. Ickes was lobbied directly on this issue not once, but twice by Tom Schneider of the law firm of O'Connor & Hannan.

It is even more interesting that on the day that the casino application was rejected, Mr. Schneider's law partner, Patrick O'Connor, who testified here yesterday, noted in his billing records that he needed to followup with Harold Ickes at the White House to outline fund-raising strategies. This is the same Harold Ickes who kept

records of large contributions by Indian tribes to State parties in his office.

Do all of these coincidences suggest an explanation as to why Secretary Babbitt might invoke Harold Ickes' name? Do they lend credibility to Mr. Eckstein's sworn testimony? I would say that they do. But don't take my word for it. Here is what Federal Judge Barbara Crabb had to say last March. "There is considerable evidence that suggests that improper political pressure may have influenced agency decisionmaking."

Here is what the Justice Department attorney who is representing the Interior Department in this civil suit had to say. "Now that we have reviewed the administrative record in greater depth, we have determined that the alleged problems with the process are significant. We are primarily concerned about our ability to show that plaintiffs were told about and given an opportunity to remedy the problems which the Department ultimately found were outcome-determinative."

The Attorney General appointed by Bill Clinton has, according to news reports, found enough credible evidence to seek an independent counsel. Now, this remains to be seen, but this is what reports have been made through the media. A Federal judge appointed by Jimmy Carter found considerable evidence of improper political interference. The Interior Department's own lawyer said that they didn't follow their own procedures and recommended settling the case. Two of the Secretary's top aides left the Department for very lucrative jobs representing the tribes who benefited from the decision. And yet some of my colleagues here today say there is no evidence whatsoever of any wrongdoing. I find that amazing.

I am tempted to discuss at length the multitude of ways that the Interior Department violated their own procedures. There was no finding of any detriment to the local community, which is required by the law. There was never any meaningful consultation with the applicants to give them a chance to resolve any problems, which is required by the law. They reopened the administrative record at the request of the opposing tribes, the very rich tribes, and they kept it a secret from the applicants, the very poor tribes.

I won't go into this in the length that it deserves, but let me summarize it in this way. The poor tribes, the tribes whose members made an average of about $6,000 a year, the tribes that couldn't afford to give anything to the DNC, were completely shut out of the process. They were kept in the dark. The wealthy tribes, the tribes whose casinos were bringing in around $400,000 a year for every man, woman and child, the tribes who went on to give $356,000 to the Democratic National party, got special treatment. That pretty much says it all.

Secretary Babbitt, thank you for agreeing to testify today. I am certain that you will defend your record very ably. We will proceed to your opening statement in a moment, but first I want to recognize Congressman Waxman for his statement.

Mr. WAXMAN. Thank you very much, Mr. Chairman.

As we come to the end of our examination of the Hudson Casino decision, we have sat through hearings, we have heard this controversy described both as a fight between competing Indian tribes and a prime example of selling public policy for campaign contribu-

tions. This is our fourth hearing on this matter. But the essence of this fight really came into focus for me at the end of yesterday's hearing. When I looked around the room, I only saw three other committee members present and not a single reporter.

The only people here were Interior Department officials and Fred Havenick, the owner of the Hudson Dog Track and his team of lawyers. In the end, when we are finished with our speeches and questions, that's what this controversy is all about. It is about one man's determined effort to force the Interior Department to approve his proposal to build a casino in Hudson, WI.

In waging this fight, Mr. Havenick has done nothing illegal or improper, but he has pulled out all the stops to get his way. When he first proposed his dog track in the 1980's, he had to surmount local zoning ordinances and fierce local opposition. He managed to do both and he opened his track. When his track lost millions, as everyone predicted it would, he conceived the idea of bringing a Las Vegas style casino to Hudson, but because only Indian tribes were permitted to operate casinos under Wisconsin law, he needed to find an Indian tribe willing to be his partner.

When the combined vote of the towns of Hudson and Troy rejected the casino, his first partner, the St. Croix Indian tribe, withdrew. So Mr. Havenick had to look around for some other partners. And in 1994, he found new partners in three other tribes that were 80 to 200 miles away from this site where his dog track was located.

So he petitioned the Department of the Interior with these new partners for what is called an off-reservation trust. That means that the land is taken away from any control of the local jurisdiction, State and city officials, and turned over to the Federal Government, and then under the Federal Government's aegis, a casino could be opened up, even though it is not on a reservation.

Well, when the Interior Department found that local opposition was intensifying and opposing the tribes, Mr. Havenick mounted a lobbying campaign. He hired his own lobbyists. One of them, Paul Eckstein, appeared to be the one lobbyist in Washington who would have the best access to Secretary Babbitt. It's interesting. The chairman just said that what we have were poor Indian tribes, they couldn't afford contributions, they couldn't afford representation, they were shut out.

In fact, Mr. Havenick and his partner Indian tribes who put up no money, but looked forward to realizing some economic benefit from this casino, hired lawyers, hired people to do what they could. Mr. Havenick had made political contributions, and they hired a lobbyist. They hired a lobbyist whose biggest claim to fame was that he was a personal friend of the Secretary's, and they hoped that he would influence the Secretary.

Well, it didn't work out that way. The Department of the Interior rejected Mr. Havenick's scheme, and so Mr. Havenick hired more of an army of lawyers and lobbyists to overturn this decision. He filed a lawsuit in Wisconsin and deployed lobbying super stars like the powerhouse firm of Patton, Boggs & Blow to argue his case in Washington. And he is doing all of this with a real sense of urgency. He is losing millions of dollars without a casino and believes he can make millions of dollars with one.

As we have held these hearings, it has become clear that not a single Member of this committee shares Mr. Havenick's view that it makes sense to locate a casino in Hudson, WI. I haven't heard any Member on either side of the aisle, Democrat or Republican, argue with the substance of the Interior Department's decision. In fact, we learned that elected officials in Wisconsin have consistently opposed the casino, including the former Republican Congressman from the area, the State Attorney General, and the Governor.

Democrats and Republicans alike back home didn't want this casino. So instead of challenging the decision, the chairman has argued the decision was right, but that campaign contributions and political considerations improperly affected the political—affected the decisionmaking process. But in our hearings and depositions, we have heard from the four Interior Department employees most involved in this issue. They have all testified under oath that they made the decision on the merits and without political interference. That is what George Skibine, Hilda Manuel, Michael Anderson and Tom Hartman said in their depositions, and some of them were even allowed to testify in our hearings. They have all said that this was—the basis of the decision was based on the merits and not because of political interference.

That position was affirmed yesterday by John Duffy and Tom Collier. Those are the facts, regardless of whether the chairman or Mr. Havenick want to accept them, and if I fault Mr. Havenick and others for anything, it is for their readiness to ignore the facts and impugn the motives of anyone who disagrees with them.

When asked about his own significant campaign contributions, even to people who could make the decision about this casino, Mr. Havenick said he made his contributions because he was a generous man, motivated by a belief in the candidates to whom he was contributing. It was not an effort, he said, to buy influence. But when Mr. Havenick testified about his opponents' campaign contributions, he insisted that they were motivated by politics and unfairly influenced the decisionmaking process.

Although Mr. Havenick has been litigating this matter for 2 years, he waited until last week for the very first time to question George Skibine's integrity, or to bring Terry McAuliffe's name into the fight. I think anyone following this matter closely now knows both allegations are thoroughly discredited.

By this point, it is absolutely clear that the Hudson Casino decision was heavily lobbied by both sides. The chairman said that we reject that there was political activities to try to get this casino application approved. I don't deny there were political activities to get it approved, and it is clear there were political activities to get it disapproved. But the question is not whether there were political activities involved, the question is whether those political activities determined the outcome, and there is no evidence whatsoever that the decision was made for any other reason than on the merits and under the testimony by those who made it without any kind of political interference.

I am sure Secretary Babbitt's testimony today will focus in part on the different recollections he and Paul Eckstein have regarding their meeting on July 14, 1995. Mr. Babbitt has already testified

in the Senate on this issue, and I am not sure we will learn anything new today, but I am glad he has taken the time to be with us.

I want to add another point. The name of Harold Ickes has been bandied about as if Harold Ickes must have been the key man who exerted the political interference. Well, it is rather shameful, it seems to me, that when the chairman of the committee makes accusations about Harold Ickes' involvement, he has not even given Harold Ickes the courtesy of asking him whether he was involved. If we are trying to get to the truth, why not ask a man who has been accused or presumed to have done something whether he did it. We have heard from Harold Ickes and he has denied being involved.

Now, we have also heard from the chairman that there is a Carter-appointed judge who has, according to the chairman, found significant evidence of political interference. Let's get the record straight. Judge Crabb said, in looking at this litigation by Mr. Havenick and his partners, that "There is considerable evidence that suggests that improper political pressure may have influenced agency decisionmaking. It is necessary to allow extra record discovery to uncover whether that is true." You never hear them read that last part of her sentence.

All she said was, there is evidence, we don't know whether it is true or not; therefore, in the litigation we are going to allow discovery to see if evidence can be found to substantiate this kind of accusation. She didn't buy this line, and it is unfair to attribute that line to her.

One final point, Mr. Chairman. Yesterday, you rejected my request that this committee issue subpoenas relating to the Newt Gingrich-Trent Lott tobacco scandal. The facts, as you may remember, are that the tobacco industry is the biggest contributor to the Republican party. There is not even a close second. They are the biggest contributor to the Republican party.

They hired Haley Barbour, who was the chairman of the Republican party, to lobby for them, and then they got the Republican Senate leader, Trent Lott and the Republican Speaker, Newt Gingrich, to sneak into a bill, without anybody knowing about it, a $50 billion tax break for the tobacco industry.

Mr. Chairman, yesterday you said we weren't going to look at this because the Commerce Committee has jurisdiction over the tobacco legislation, but as I pointed out to you, the Commerce Committee is not conducting an investigation on campaign finance issues. Our committee is doing that.

In addition, we have another committee of the House called the Resources Committee which has jurisdiction over the Hudson Casino issue and the whole idea of Indian trust land and whether there should be gambling on or off the reservation. That is not our committee's jurisdiction. It is the Resources Committee, and they are conducting their own investigation on this same issue. They will probably have all the same witnesses and all the same characters will be in the audience and we will hear all the same testimony over and over again with all the same charges, even though there is no evidence to back up these charges. But the fact that we have another committee of the House that has legislative jurisdic-

tion over this issue didn't keep us from looking at the question of whether there was improper political interference because of campaign contributions.

By the same logic, we ought to be holding a hearing on the tobacco scandal. We ought to be looking at whether the campaign contributions to the Republican party influenced this sneaking into the budget bill a $50 billion tax break.

I realize I am not going to change your mind. I think you made an arbitrary and partisan decision, but I have no intention of giving up on my demand for these subpoenas, and I am going to appeal your decision, Mr. Chairman, to the full committee and will insist that we vote on this matter when we next meet. If any scandal deserves our attention, it is the $50 billion tax break Newt Gingrich and Trent Lott gift wrapped for the tobacco industry.

That concludes my statement. I am pleased the Secretary is here. I am looking forward to his testimony. These 4 days, extraordinary 4 days devoted to this issue, I think, has set out the record very clearly, and let the facts speak for themselves, and when the facts speak for themselves, I think that we realize that what we have are allegations based on innuendo and allegations that are based on partisanship, without substantiating evidence to make those allegations stick. I yield back the balance of my time.

Mr. BURTON. Thank you, Mr. Waxman.

Secretary Babbitt, would you please rise?

[Witness sworn.]

Mr. BURTON. Mr. Babbitt, do you have an opening statement you would like to read? We would like to, if possible, keep it as close to 5 minutes as we can, but if you feel you need to go further, we will allow it. If you can condense it into 5 minutes, we will submit the rest for the record.

Mr. Babbitt.

STATEMENT OF BRUCE BABBITT, SECRETARY, DEPARTMENT OF THE INTERIOR

Secretary BABBITT. Mr. Chairman and members of the committee, I appear today in response to your request to discuss the record of the Hudson Casino matter. The committee, of course, has every right to look into the record, and we at the Interior Department have every right to a fair and impartial hearing. Someone once said that facts do not cease to exist just because they are ignored.

Mr. Chairman, there are those with a vested financial interest in this matter who would have you and members of this committee turn a blind eye to the facts of the case so they can peddle their half-baked theory of improper political influence and intrigue. They would like you to ignore the voluminous record, the hours of sworn testimony by dedicated and hard working civil servants in the Interior Department, and have you believe a conspiracy theory worthy of Oliver Stone. But efforts to obscure the truth will not and cannot change the facts.

The fact is that the decision in the Hudson Casino matter was firmly grounded in the law, it was consistent with Department practice, and based on the merits of the case. The fact is it was the right decision made in the right way and for the right reasons.

This was not, as some have portrayed it, a rich tribe-poor tribe saga. This casino was a business proposition developed by a well-financed, out-of-State gambling company. That gambling company, itself headed by a Democratic party contributor, hired its own lobbyists, tried to capitalize on an old friendship with me to push through a deficient application over the legitimate objections of the local communities. They wanted to make the Federal Government a participant in their scheme to add a money-making casino to a money-losing dog track. The decision to reject their plan was reached entirely on the merits, and it was entirely reasonable.

Now, both the proponents and opponents of the casino tried to use intermediaries with special access to influence the decision. One side allegedly tried to misuse its political contacts outside the Interior Department. The other side tried to misuse personal access to me. I consider both approaches to be inappropriate.

Political affiliation should have nothing to do with a decision like this, and it didn't. Campaign contributions should have nothing to do with a decision like this, and they didn't. A personal relationship with the Secretary of the Interior should have nothing to do with a decision like this, and it didn't.

At this committee's request, the Department has now produced thousands of documents about this case and how the decision was made. If you look at the record as a whole and do not simply take snippets of conversations out of context, you will see that the responsible Government officials, who had no personal stake in whether a Florida gambling empire should be allowed to have a money-making casino at a money-losing dog track, came to a consensus decision based on the law and Department practice, and they got it right.

As Secretary, I am ultimately answerable for the Department's decisions. If you disagree with one of them, you have every right to criticize me, but it crosses the line of fairness and common decency to attack the integrity of the staff of this Department, especially the civil service staff. They are dedicated and honorable men and women. They acted properly, and they made their recommendations on the merits, and there is not an iota of credible evidence suggesting otherwise.

A number of myths have been deliberately created about this decision. Let me discuss some of them.

Myth No. 1. It was somehow unique and unusual for the Department to disagree with the approval recommendation that came up from Minneapolis by the Bureau of Indian Affairs.

The reality is that the review of the local decision was routine. By my Republican predecessor, Manuel Lujan, required the Department to review off-reservation gaming applications in Washington. Why? To ensure uniform and consistent application of the law and Department practice, and in this administration, we have continued that practice. Therefore, it was absolutely routine to review the area office recommendation and not unusual for the Department in Washington to have a different opinion. In fact, of the nine off-reservation applications approved by a BIA regional office, since the Indian Gaming Regulatory Act was passed in 1988, only one has led to the creation of an active off-reservation casino. In that case,

unlike Hudson, the casino was supported by the surrounding community.

Where there is substantial and well-founded community opposition instead of support, our practice is to reject the application. And we are not the first. In 1992, although the local BIA office recommended approval, Secretary Lujan denied an application by the Santee Sioux tribe of Nebraska, which wanted to open a casino in a community that had demonstrated substantial opposition. We have never approved an application in this administration that did not have community support.

Myth No. 2. The Hudson application was headed for Department approval but somehow it got derailed.

The reality is that the decision to reject the application was based on the law, consistent with Department practice, and was never opposed by any staff member in the Department's Washington headquarters.

Now, the law passed by Congress properly makes it more difficult for an off-reservation casino to be approved. It also requires us to give great weight to the sentiments of the local community. And because of the law, this application was controversial and it was troubled from the moment its consideration began at the Department.

Now, you have heard the testimony of the Department officers who participated in making the decision, and as these officials have testified to you, not a single person in the Washington office ever recommended approval of the Hudson Casino application, and no one in the Washington office ever wrote a memorandum recommending approval of the casino. The decision to reject the application was in full accord with the recommendation of the senior civil servant, George Skibine. For Mr. Skibine and others at Interior in Washington, the principal remaining issue was not whether to deny the application, but whether to rest the denial on the Indian Reorganization Act, the Indian Gaming Regulatory Act, or both.

Deficiencies in the application were also apparent to the National Indian Gaming Commission, a quasi independent body not subject to my review. Three weeks before the Department decision, the National Indian Gaming Commission sent the Florida gambling company and the applicant tribes a letter stating that the application did not contain sufficient information to warrant approval. The decision to deny the application was also consistent with the Department practice. We do not allow a tribe to place a casino far from its own reservation in a community where there is substantial and well-founded opposition to it.

I am gratified to learn from the record of these hearings to date that this committee, Republicans and Democrats alike, agree with this practice. In the Hudson case, the opposition of the surrounding community was widespread. It was legitimate; it was bipartisan. Community political leaders, including many Members of Congress, expressed their opposing views, and in contrast to this opposition, to my knowledge, not a single Member of Congress went on record in support of the Hudson application.

Now, the gambling interests financing this application, they knew about the deficiencies in their application, but they could not

overcome the community opposition problem for a simple reason and that's because they were anchored to Hudson by their interest in bailing out their failing dog track. We took the views of community political leaders in Hudson, the city council formal opposition in Troy, the city—town council formal opposition, the St. Croix tribe formal opposition into consideration. It was entirely appropriate in the decisionmaking process, as I am sure members of this committee would agree.

Myth No. 3. The supposed derailment was somehow caused by improper political influence.

The reality is that the participants inside the decisionmaking process based their decision on the merits of the case, and the questionable behavior of lobbyists on both sides of this issue did not affect the decision. If the allegations are correct that lobbyists who opposed the application attempted to inject improper political considerations into Interior's decisionmaking process, well, they failed.

As the testimony before you has shown, the Interior officials involved in the decision were unaware of, and therefore, could not possibly have been influenced by, any of the improper political arguments that advocates of the opposing tribes are reported to have made.

I was personally unaware of any such improper political efforts by the opposing tribes, as were the other Interior officials, who actually participated in deciding the Hudson matter. Any improper political message simply did not get through.

To be specific, I was unaware of communications the lobbyists of the opposing tribes are alleged to have had with the President and his advisors in the White House. I did not hear about them from the opposing tribes' lobbyists, and I did not hear about them from Harold Ickes or anyone else at the White House. Neither, as they have testified, did my personal staff or the Indian Affairs officials, including the career civil servants who worked on the matter.

The Department's officials have been deposed and redeposed under oath. George Skibine, for example, a career civil servant of impeccable reputation, was deposed twice and appeared before this committee and the Senate committee for a total of 16 hours of sworn testimony. They have answered the same questions again and again, and their testimony confirms what I say.

Myth No. 4. The White House inquiries into this matter were attempts to influence the Hudson decision.

The reality is that these White House inquiries, which critics of my Department have mischaracterized to further their conspiracy theory, were entirely benign and utterly routine. They involved status checks made by staff assistants. The staff at Interior recognized the status checks as routine and treated them as such. I was unaware of these inquiries at the time. When I answered the July 19, 1996, letter from Senator McCain more than a year after the Hudson decision, I attached a staff memo describing such inquiries.

Myth No. 5. Somehow I was the conduit by which White House influence was transmitted to Interior decisionmakers.

The reality is that the conduit theory is a fantasy. I never communicated with anyone at the White House or the Democratic National Committee about the Hudson matter. And because I had pre-

viously delegated my authority in such gaming matters to subordinates, I did not participate in the Department's decision. Thus, as I have said previously, the conduit theory fails because there was no connection at either end of the alleged conduit. The speculation and innuendo about it simply does not survive an examination of the facts.

Mr. Chairman, the record regarding the Department's Hudson Casino decision shows that it was the right decision made in the right way for the right reasons. But I must acknowledge my own mistake in what I said about it when I granted the casino lobbyist's last minute request to meet with me.

On July 11, 1995, as the Department was close to announcing the decision to deny the application, I received a telephone call from an old friend and former law partner, Paul Eckstein, who had been hired by the gambling company supporting the application. Mr. Eckstein asked to meet with me. I asked one of my counselors, John Duffy, to meet with him. Mr. Duffy met with Mr. Eckstein on July 14th, the earliest date Mr. Eckstein could get to Washington. Later that day, Mr. Eckstein asked to see me without an appointment. When I reluctantly agreed to meet with him, he told me that Mr. Duffy had said the rejection decision was imminent. He then asked me to delay it so his clients could make a final presentation. I declined. Unfortunately, I made up an excuse in an effort to end the meeting. To the best of my recollection, I said that Harold Ickes wanted or expected the Department to make a decision promptly. It was indulgent of me to see Mr. Eckstein, and it was a mistake to invoke Harold Ickes' name. The fact is, I never spoke with Mr. Ickes about the Hudson matter, and I shouldn't have given Mr. Eckstein any reason to suppose that I had. I regret the remark. It was a mistake, but that's all it was.

Mr. Chairman, let me now turn to my own prior statements about this matter, because they have been the basis for some unfair and unsupportable accusations that have been leveled at me. I told the truth when I wrote to Senator McCain about this matter. I told the truth when I wrote to Senator Thompson. I told the truth when I testified before the Senate Governmental Affairs Committee, and I am telling the truth today. The letters to Senators McCain and Thompson are consistent on the central point of this inquiry and they are truthful on the different issues they address. Both letters state that I never discussed the Hudson matter with Harold Ickes. In the McCain letter I disputed Mr. Eckstein's version of our conversation. In the Thompson letter I provided my own best recollection of that conversation. The context of the two letters was different and accounts for the different language in the documents. As I have testified, I never spoke with Harold Ickes or anyone else at the White House about the Hudson matter.

When I wrote Senator McCain in August 1996 after the Eckstein meeting, 13 months after it occurred, that is what I told Senator McCain. That is also what I told Senator Thompson in my letter of October 10, 1997. That was my sworn testimony on October 30, 1997.

Mr. Chairman, the voluminous record in this matter demonstrates that denying the application was the right decision, made the right way, and for the right reasons.

I have been in public service for 23 years, and during that time I have worked hard to earn a reputation for integrity and independence. The attacks on my integrity are uncalled for, they are unwarranted, and I must tell you I deeply resent them. I am determined to do everything I can to prevent my reputation and the reputation of George Skibine, Mike Anderson, and other dedicated individuals in the Department from being tarnished by a controversy manufactured by the losers to take advantage of the corrosive political atmosphere that surrounds this city at this time. The test of the Department's action in the Hudson decision should not be what was said or done outside the decisionmaking process by private individuals who had a vested interest in the decision. The test should be what was said and done inside the process by those who have a responsibility to serve the public interest. Those individuals have testified before you and have vouched for the integrity of their actions in the Hudson matter. Mr. Chairman, and members of the committee, with a clear and certain conscience, so do I.

Thank you.

Mr. BURTON. Thank you, Mr. Secretary.

[The prepared statement of Secretary Babbitt follows:]

**STATEMENT OF SECRETARY BRUCE BABBITT
BEFORE THE HOUSE COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT -- JANUARY 29, 1998**

I am glad to have an opportunity to set the record straight on the Hudson casino matter. Let me start with some plain facts that should dispel in fair minds the clouds of unwarranted suspicion that have been raised about it.

First, I had no communications with Harold Ickes or anyone else at the White House about the Interior Department's consideration of a request by three Wisconsin Chippewa tribes that the United States acquire a parcel of off-reservation land in Hudson, Wisconsin, so that the tribes could open a casino on it in partnership with a failing dog racing track owned by a gambling company from Florida. I had no communications with Mr. Ickes or anyone else at the White House about either the substance or the timing of the Department's decision. I have since been told that Mr. Ickes' subordinates communicated with a staff person in my office on three occasions prior to the Department's July 14, 1995 decision. I was not aware of those communications before the Department's decision and we disclosed the fact of routine status checks by the White House on this matter in a memorandum attached to my letter to Senator McCain on August 30, 1996. Neither I nor the person in the Department who had these communications with the White House believe that those communications involved any attempt by the White House to exert influence on the Department's decision in the Hudson case.

Second, I had no communications with Donald Fowler or anyone else at the Democratic National Committee concerning the Hudson matter.

Third, I did not personally make the decision to deny the Hudson application, nor did I participate in Department deliberations relating to the application. The decision, however,

was made on my watch, and I take full responsibility for it. Furthermore, I agree with it.

Fourth, as I stated to the Senate Governmental Affairs Committee, the Department based its decision solely on the criteria set forth in Section 20 of the Indian Gaming Regulatory Act. One of those criteria is detriment to the local community. The failure to meet this criterion was the principal ground for rejection of the application under Section 20 of the Indian Gaming Regulatory Act. This same criterion is also a ground for exercising the Secretary's discretion under another statute, Section 5 of the Indian Reorganization Act, to reject applications to take off-reservation land into trust. As you know, the rejection decision also cites Section 5 of the Indian Reorganization Act as an alternate ground for the decision. The attached memorandum from the Department's Solicitor, John Leshy, explains the legal basis for the decision in further detail.

In applying the criterion of detriment to the community, the Department in this Administration has followed the practice of not imposing off-reservation gaming on communities that do not want it. In this case, the three Chippewa tribes requested that we acquire off-reservation land to open a casino located within the City of Hudson, which is between 85 and 188 miles from their reservations. The Departmental practice is to give great weight to the views of local elected officials and tribal leaders. The City Council of Hudson passed a resolution in February 1995 opposing an Indian casino in Hudson. The City Council of Troy, Wisconsin, the adjacent community, passed a resolution in December 1994 opposing an Indian casino in Hudson. The elected state representative from that district in Wisconsin strongly opposed it by letter in March 1995, as did the Congressman representing the district in April 1995. Many other elected federal, state, and tribal officials

from the region also weighed in against the proposed casino, including many members of Congress and Senators.

This virtually unanimous opposition of local governments, including the nearby St. Croix tribe, required the Department to reject the application. This was the recommendation of the senior civil servant responsible for the matter, and I fully support the decision that was made on the basis of that recommendation.

Fifth, it is not true, as some have alleged, that political appointees in the Department overruled a career civil servant's recommendation that the Department approve the Hudson application. In fact, as testimony to this Committee has convincingly demonstrated, the eighteen-year career civil servant who headed the Indian Gaming Management Staff reached his own conclusion that the Department should deny the application in view of the strong community opposition. He made that recommendation to the Deputy Assistant Secretary for Indian Affairs who, in consultation with the Solicitor's Office and others in the Office of the Secretary, agreed with the recommendation and issued a decision to that effect.

Sixth, I had no knowledge as to whether any lobbyists had sought the help of the Democratic National Committee on this matter. But to whatever extent this happened, I can say with conviction that it did not affect the substance or the timing of the Department's decision.

In sum, the allegations that there was improper White House or DNC influence and that I was a conduit for that influence are demonstrably false. There is no connection at either end of the alleged conduit. At one end, as I have stated, I did not speak to Mr. Ickes or anyone else at the White House or at the DNC; and, at the other end, I did not direct my

subordinates to reach any particular decision on this matter, although during my watch the Department has not acted under Section 20(b)(1) of IGRA to approve Indian gaming establishments, far from the tribes' reservations, over the objections of reluctant communities. The Hudson decision reflected that and nothing else.

That should end this matter, and I suppose it would have ended the matter had I not muddied the waters somewhat in my letters to Senators McCain and Thompson in describing a meeting I had with Mr. Paul Eckstein on July 14, 1995. This is what happened:

Mr. Eckstein and I had been colleagues in law school and law practice. Sometime in the Spring of 1995, Mr. Eckstein, who practiced in Phoenix, came to represent clients in Wisconsin and Florida who supported the Hudson application. On July 14, Mr. Eckstein was visiting other offices at the Department to urge the Department to delay a decision in the Hudson case, which was ready to be made and released that day. Mr. Eckstein then asked to meet with me. Against my better judgment, I acceded to Mr. Eckstein's request. When he persistently pressed for a delay in the decision, I sought to terminate the meeting. My best recollection is that I said that Mr. Ickes, the Department's point of contact on many Interior matters, wanted or expected the Department to decide the matter promptly. It was just an awkward effort to terminate an uncomfortable meeting on a personally sympathetic note. But, let me emphasize again, I had no such communication with Mr. Ickes or anyone else from the White House.

If my letters to Senators McCain and Thompson caused confusion, then I must and do apologize to them and to the Committee. I certainly had no intention of misleading anyone in either letter. My best recollection of the facts is as I have just stated them.

The bottom line is that the Department's decision on the Hudson matter was based solely on our great reluctance to approve off-reservation Indian gaming applications over community opposition. The record before the Department in this case showed strong, widely-shared opposition in the surrounding community to the Hudson proposal. And there was no effort by the White House, directed toward me or, to my knowledge, to others in the Department, to influence the substance or even the timing of the Department's decision.

I hope I have clarified this issue. I would be pleased to answer your questions.

United States Department of the Interior

January 6, 1998

Background Paper
Departmental Decisionmaking on Off-Reservation
Land-In-Trust Applications for Gaming Purposes

The practice of the federal government holding title to Indian land in trust dates back to colonial days. Since enactment of the Indian Reorganization Act of 1934 (IRA) (see 25 U.S.C. § 465[1]), the Department of the Interior has had broad authority to take title to property in the name of the United States in trust for tribes or individual Indians. Being held in trust means, among other things (and subject to some exceptions), that the land is subject to tribal and federal law, and immune from state and local governmental regulation and taxation.

The Department considers whether to take land in trust according to regulations set forth at 25 C.F.R. Part 151. If the applicant tribe seeks to have the Department take land in trust for gaming purposes, the Department considers whether the application meets the requirements in section 20 of the Indian Gaming Regulatory Act (IGRA).

The Part 151 Process: Taking Land In Trust

In 1980, the Department adopted regulations to govern its exercise of authority to take land in trust. These regulations are found at 25 C.F.R. Part 151, and land-in-trust transactions are sometimes referred to colloquially as Part 151 acquisitions.

The Part 151 regulations set out the procedures to be used and the factors to be considered when the Department considers these trust land acquisitions.[2] Ever since 1980, these regulations have required examining, among other things, the individual Indian or Indian tribe's "need" for additional land, the "purposes for which the land will be used," the impact on state and local government of removing the land from the tax rolls, and

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[1] The IRA was enacted in reaction to the large reduction in the Indian land base caused by the General Allotment (Dawes) Act of 1887, which broke up many Indian reservations, allotting parcels to individual Indians and making all or part of the remaining land available for non-Indian settlement. The IRA put an end to the allotment policy and authorized the rebuilding of the Indian land base through trust land acquisition.

[2] Some acquisitions in trust are mandated by Congress, which may partially exempt them from the Part 151 regulations.

"[j]urisdictional problems and potential conflicts of land use which may arise." 25 C.F.R. § 151.10 (b) through (f).

The vast majority of land-in-trust acquisitions are within the exterior boundaries of existing reservations.[3] Off-reservation acquisitions (defined as those involving land outside of and not contiguous to a tribe's reservation) are rare.[4] The regulations adopted in 1980 did not distinguish between on- and off-reservation acquisitions, nor did they address proposed trust land acquisitions involving gaming.[5] Generally, prior to 1990, all land-in-trust applications were acted upon by the Bureau of Indian Affairs's (BIA) local area offices.

In July 1990, then Secretary of the Interior Lujan adopted a policy requiring that all decisions on off-reservation acquisitions for gaming purposes be made by BIA's Central Office in Washington D.C. The 1990 policy reflected the more controversial nature of off-reservation acquisitions for gaming purposes.

The Department followed up the 1990 Lujan policy by proposing, on July 15, 1991, amendments to the Part 151 regulations to specifically address off-reservation acquisitions, for gaming and non-gaming purposes. The preamble to the 1991 proposal noted that off-reservation acquisitions, including those for gaming, can be

> highly visible and controversial due to their possible impact on local governments. The loss of regulatory control and removal of the property from the tax rolls are the objections most often voiced by local governments . . . .

56 Fed. Reg. 32278 (July 15, 1991). The purpose of the proposal, the preamble explained, was to ensure that off-reservation proposals "will be reviewed in a consistent manner and, if possible, reduce or eliminate adverse impacts on surrounding local governments, while supporting tribal sovereignty and self-determination." Id.

The proposed amendments were published in final form on June 23, 1995, and explicitly addressed decisionmaking on applications to take off-reservation land in trust. Among other things, they require that, as the distance from the reservation increases, "greater scrutiny" be given to the tribe's "justification of anticipated benefits from the acquisition" in trust, and "greater weight" be given to the acquisition's potential impacts on the regulatory and taxing jurisdiction of the state and local governments. 25 C.F.R. §

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[3] Primarily as a consequence of the General Allotment Act, land within the outer boundaries of Indian reservations often passed into non-Indian ownership.

[4] The proposed Hudson Dog Track acquisition was located between 85 and 188 miles from the applicant tribes' reservations.

[5] Gaming enterprises on Indian trust land did not proliferate until after enactment of the IGRA in late 1988.

151.11(b). They also expressly require the applicant to include in the application an evaluation of possible environmental consequences of taking the land in trust.

The revised rules are generally consistent with and essentially a refinement of the Part 151 rules adopted in 1980.[6] In principal part they confirm the policy announced by Secretary Lujan in 1990, that had been implemented ever since, to provide more specific direction with regard to off-reservation applications.[7] Thus, the policies reflected in these amendments are relevant to the Hudson Dog Track decision, which was made 10 days before the revised rules took effect on July 24, 1995.[8]

Section 20 of the Indian Gaming Regulatory Act:. Determining Whether Gaming May Be Conducted on Land Taken In Trust

Where off-reservation lands have been or are proposed to be acquired in trust after October 17, 1988 and are proposed to be used for Indian gaming, an additional statutory requirement comes into play. Section 20 of IGRA, 25 U.S.C. § 2719, requires that if lands are acquired in trust after October 17, 1988 (the date IGRA took effect), they may not be used for gaming, unless the Department:

> . . . after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of

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[6] For example, the environmental assessment requirements of the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., already applied to Part 151 trust acquisition. The revised rules simply made clear that the applicant should address environmental issues in the application. See 25 C.F.R. § 151.10(h).

[7] One of the revisions proposed in 1991 would have created a new subsection (§ 151.12) specifically addressing off-reservation trust acquisitions for gaming purposes. This proposed subsection was deleted in the final rule published in June 1995. The preamble to the final rule explained that a new regulation would be prepared later specifically addressing this subject. See 60 Fed. Reg. 32874 (June 23, 1995) (addressing comments on proposed § 151.12). The title to the final regulations indicated they applied only to "nongaming" land acquisitions. This was a bureaucratic error. (Had the regulations applied only to nongaming acquisitions, no regulations would have been applicable to acquisitions that involved gaming.) This error was corrected by technical correction notices published in 60 Fed. Reg. 48894 (September 21, 1995) and 62 Fed. Reg. 1057 (January 8, 1997). The Part 151 regulations continue to apply to off-reservation trust acquisitions for gaming as well as for other purposes.

[8] The generic federal Administrative Procedure Act postpones the effective date of rules or rule revisions until thirty days after publication in the Federal Register, with certain exceptions not relevant here. See 5 U.S.C. § 553(d).

> the Indian tribe and its members, and would not be detrimental to the surrounding community.

25 U.S.C. § 2719(b)(1)(A)(emphasis added).[9] Section 20 does not provide authority to take land into trust. Rather, it is a separate and independent requirement to be considered before gaming activities can be conducted on off-reservation land taken in trust after October 17, 1988.

Secretary Lujan's July 1990 policy addressed the Department's decisionmaking under section 20, centralizing such decisionmaking in Washington D.C.[10] Under Secretary Babbitt, the Department carried forward the policy that all off-reservation acquisitions in trust for gaming purposes must be approved by the Department in Washington rather than in the BIA's area offices. This policy was reaffirmed by Assistant Secretary Deer in a May 26, 1994 memorandum to the BIA area directors. This memorandum directed that all applications for off-reservation land-in-trust acquisitions for gaming purposes on lands acquired after October 17, 1988 "will continue to be reviewed and approved at the Washington level."[11]

The Relationship of Part 151 to Section 20

Proposals made after October 17, 1988, to take off-reservation land in trust which do not contemplate gaming on the land are handled exclusively under Part 151; that is, because gaming is not involved, section 20 does not come into play. (If such an acquisition is approved, and sometime later gaming is proposed on such land, the Department would then undertake a section 20 analysis.)

On the other hand, when one of the purposes of the proposed off-reservation trust land acquisition is gaming, both Part 151 and section 20 must be satisfied. This is made clear by section 20(c) of IGRA, which says that nothing in section 20 shall "affect or diminish the authority and responsibility of the Secretary to take land into trust." 25 U.S.C. § 2719(c).

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[9] Section 20 contains several exceptions, none of which was applicable to the Hudson Dog Track situation. Section 20 also requires concurrence of the Governor of the State where the gaming activity would be conducted (if none of the exceptions applies). This is discussed further below.

[10] In February 1992, Secretary Lujan signed an additional Directive on Indian Gaming Management that underscored the duty to consult with local, state, and tribal governmental officials in considering off-reservation trust acquisitions for gaming purposes.

[11] As a result, the BIA area office in Minneapolis knew it was making only a recommendation on the Hudson Dog Track proposal, and that the final decision would be made by Departmental officials in Washington D.C.

The Part 151 and section 20 inquiries involve many of the same considerations. For example, both involve some assessment of the effect of the proposal (under Part 151, of taking the land in trust; and under section 20, of allowing gaming on the land) on the surrounding community. (This was the situation with respect to the Hudson Dog Track proposal, because the sole purpose of the acquisition was to build and operate a casino on the land proposed to be taken into trust.) [12]

Specifically, the Part 151 regulations require consideration of (among other things) the need for and purpose of the acquisition, and an assessment of jurisdictional problems, potential conflicts in land use, and environmental factors. See 25 C.F.R. §§ 151.10, 151.11. This means that, where gaming is a purpose of the trust land acquisition under Part 151, the Part 151 regulations require a consideration of gaming and its effect on the community.

Section 20 requires specific determinations on two issues: whether the gaming proposal is in the "best interest of the [applicant] tribe and its members" and whether it is "not detrimental to the surrounding community." 25 U.S.C. § 2719(b)(1)(A). Therefore, it too requires a consideration of gaming's effect on the local community.

In short, when an off-reservation land-in-trust application is submitted under Part 151, and involves gaming, there is a good deal of overlap, but not complete congruence, between section 20 and Part 151.

If an applicant is rejected under either Part 151, or under either part of the two-part determination required by section 20, then no gaming can take place on the land under IGRA. Therefore, all determinations must be in favor of the acquisition-in-trust in order for gaming to take place.

For example, there are several possible outcomes when deciding upon a proposal, like that involving the Hudson Dog Track, to take off-reservation land into trust solely for gaming. Specifically, the Department could decide

- not to take the land into trust under Part 151; or,
- that the gaming proposal was detrimental to the surrounding community and deny

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[12] As noted above, section 20 requires that, before making the determination whether the proposed gaming establishment "would not be detrimental to the surrounding community," the Department consult with "appropriate State, and local officials, including officials of other nearby Indian tribes." 25 U.S.C. § 2719(b)(1)(A). At the time the BIA Area Office was considering the Hudson Dog Track application, the BIA Central Office had issued no definitive guidance for implementing these consultation requirements. In the absence of such guidance, the Minneapolis Area Office consulted with the two towns and the county in Wisconsin most directly affected, and with almost all tribes in both Wisconsin and Minnesota.

permission to game under section 20; or,

- that the proposal is not in the best interests of the applicant tribes and deny permission to game under section 20; or,

- that all requirements of Part 151 and section 20 are met.

Under each of the first three scenarios, gaming could not take place on the lands. Only under the fourth could gaming go forward, subject to the further requirements discussed in the last section, p. 9-10 below.

When faced with a variety of decisionmaking paths, those making the decision need not resolve all questions, because if their decision on one question is negative, it makes it unnecessary to resolve others. Moreover, when a choice among several decisionmaking paths is available, other considerations of policy - such as concern about precedent, implications elsewhere (including implications for the general future of Indian gaming and legislative opposition), and the possibility of judicial review[13] - come into play.

The Hudson Dog Track Decision

The Deputy Assistant Secretary's July 14, 1995 letter rejecting the Hudson Dog Track application relied on the following:

- failure to demonstrate no detriment to the surrounding community (the letter noted the strong opposition of local communities and state elected officials on such grounds as increased traffic, land use conflicts and interference with economic development plans, and found that the Department was not in a position to substitute its judgment

[13] At the time the Hudson Dog Track decision was made, the United States had long taken the position that determinations whether or not to take land into trust under Part 151 were wholly within the Department's discretion, and not subject to judicial review. This position had been upheld by a federal circuit court of appeals. Florida Department of Business Regulation v. U.S. Department of the Interior, 768 F.2d 1248, 1256-57 (11th Cir. 1985), cert. denied, 475 U.S. 1011 (1986). A few months after the Hudson Dog Track decision, another circuit court of appeals held unconstitutional the IRA section that was implemented by the Part 151 regulations. State of South Dakota v. U.S. Department of the Interior, 69 F.3d 878 (8th Cir. 1995). Believing that the absence of judicial review for Part 151 determinations was an important factor in that court's decision, and wishing to preserve the Part 151 program, in April 1996 the Department amended its Part 151 regulations to provide an opportunity for judicial review. Taking note of that action, the Supreme Court vacated the 8th Circuit decision, in effect preserving the Part 151 process, as amended. See 117 S.Ct. 286 (1996). As a result of the April 1996 amendment, today Part 151 decisions are subject to judicial review, as are decisions under section 20.

on these matters "for that of local communities directly impacted");

- detriment to the nearby St. Croix Tribe because of its effect on that tribe's already existing gaming enterprise; and

- the failure of the tribes's proposal to sufficiently address possible harmful environmental impacts on the nearby St. Croix National Scenic Riverway.

The last paragraph of the letter stated that, "even if the factors discussed above were insufficient to support [the Department's] determination under Section 20(b)(1)(A) of the IGRA, the Secretary would still rely on these factors . . . to decline to exercise his discretionary authority [under Part 151] . . . to acquire title to this property in Hudson, Wisconsin, in trust for the Tribes."

Publicly available information, including internal communications and sworn statements of participants in the Department's decision, show that in the weeks leading up to the July 14 letter, a substantial consensus existed that the application should be rejected because it lacked merit. There was considerable discussion, however, about which grounds should be emphasized in denying the application, including: (1) basing rejection on the Department's discretion under the Part 151 process; (2) basing rejection on the Department's inability to find "no detriment to the surrounding community" under section 20; and (3) basing rejection on both grounds, relying primarily on section 20 with Part 151 as a backstop.

Some of the issues considered in these discussions were: which reason sent the strongest signal of the Department's policy of being reluctant to approve new Indian gaming activities in non-Indian, off-reservation communities that were opposed to gaming; how to weight community opposition, no matter how formally expressed, as conclusive proof of "detriment," including whether to regard elected federal officials (e.g., Members of Congress) as speaking for local communities and tribes; what, if any, weight should be given to opposition in Minnesota to this Wisconsin proposal; and what weight should be given to opposition by other tribes resisting competition. These kinds of pre-decisional debates on the policy and legal considerations involved in specifying the grounds of decisions are typical, even routine, features of governmental decisionmaking in many areas.

There also was some discussion of whether the financial terms of the tribes' deal with the non-Indian gaming interests were in the best interest of the applicant tribes and their members. The June 8, 1995 memorandum of an Indian Gaming Office financial analyst, which has been widely and erroneously characterized as recommending approval of the proposal, in fact, did not recommend approval, but rather completion of the analysis of whether the proposal would be in the best interest of the tribes. A preliminary analysis done by the BIA's Indian Gaming Management Office in Washington, D.C. in early 1995 had identified many deficiencies in the deal which could have resulted in a finding that the proposal was not in the best interest of the applicant tribes. For example, the deal called for

the tribes to make payments totaling many millions of dollars to lease a parking lot adjacent to the proposed casino for a twenty-five year period, even though the tribes' gaming compacts with the state were to expire in four years, in 1999. The draft analysis characterized this provision as "imprudent" and "troublesome." The analysis was never finalized because the decision was made to reject the application on the grounds specified in the July 14, 1995 letter to the tribes.

Decisionmaking Records Under Part 151 and Section 20

Applying well-established principles of administrative law, the Department has long regarded both the decision to take land in trust under Part 151, and the decision to permit gaming on off-reservation acquisitions under IGRA'S section 20, as informal decisions rather than formal adjudications. Most of the Interior Department's decisions (such as whether to issue mineral leases, grazing or rights of way permits) are considered informal administrative decisions.

In informal administrative decisionmaking, there is no formal designation of "parties," nor are there any rules or standards as to what kind of "evidence" may be received in the form of comment. The record of informal administrative decisions consists of the basic information collected and examined in making the decision (which may include information that would support a contrary decision), and a statement of reasons for the final decision. Often that statement of reasons is simply contained in a letter to the applicant.[14]

Typically, when a court is reviewing an informal administrative decision, the record before the reviewing court does not include drafts of documents or informal communications among Departmental personnel leading up to the decision. To promote free exchange of views, such drafts and communications are considered "pre-decisional" and are usually exempt from discovery in civil litigation as well as from disclosure under the Freedom of Information Act.[15]

The Part 151 regulations illustrate those generic principles and make clear that the land-in-trust determination is informal decisionmaking. The regulations do not contemplate

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[14] Formal administrative adjudications, on the other hand, mirror to a large extent the judicial process. They include the creation of a formal evidentiary "record" with formal submission of evidence and transcribed testimony under oath with cross-examination.

[15] They may not be exempt from disclosure to the Congress in the exercise of its responsibilities. In response to requests from congressional committees, the Department has given those committees such drafts and informal pre-decisional communications regarding the Hudson Dog Track decision that it can locate in Departmental offices and files.

that the BIA will conduct a formal adjudication or compile a formal record.[16] They provide that the Department "may request any additional information . . . necessary" to decisionmaking, and require that any decision to deny such a request be accompanied by notification to the applicant of "the reasons therefor in writing" 25 C.F.R. § 151.12(a).

It is misleading to speak of the Department "reopening the record" to provide interested "parties" the opportunity to submit "new evidence" on the Hudson Dog Track decision. It suggests a degree of formality not present in informal administrative decisionmaking. Because there is no formal record in such decisionmaking, there is no formal "closure" of the record. The Department did not "reopen" the record in early 1995. Instead, it simply indicated that material relevant to the decision would continue to be received and considered up to a specific time (in that case, April 30, 1995) after which a decision would be made. It is not unusual in informal administrative decisionmaking to continue to receive and consider information from interested persons up to the time of decision.

Further Requirements Before Gaming May Be Conducted

Even if an off-reservation land-in-trust acquisition involving gaming passes muster under Part 151 and determinations favorable to gaming are made under each of the two requirements of section 20, the applicant tribe must surmount additional hurdles before it can operate gaming activities on the land. First, the Governor of the State in which the land is located must decide whether to concur in the Secretary's determination under section 20 of IGRA, because that section also specifically requires the Governor's concurrence. 25 U.S.C. § 2719(b)(1)(A).[17] The statute makes clear, however, that the gubernatorial concurrence requirement is independent of the Department's consideration. Specifically, it does not relieve the Department of its responsibility to make its own determination whether the proposal "would not be detrimental to the surrounding community." Id.

A second hurdle in situations where a tribe proposes to conduct Class III (casino-style) gaming is for proponent tribes to negotiate a compact with the State under IGRA that will govern the terms and conditions of such gaming. All three applicant tribes in the Hudson Dog Track situation already had entered into compacts with Wisconsin, under which they operated casinos on their own reservations. The terms of these compacts limited each tribe to participation in no more than two gaming facilities, but apparently did not restrict the

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[16] The Part 151 regulations do require that state and local governments having regulatory jurisdiction over the land to be acquired be given notice and an opportunity to comment on the proposal. 25 C.F.R. §§ 151.10, 151.11.

[17] At the time of its July 1995 decision on the Hudson Dog Track, the Department had no definitive indication whether Wisconsin Governor Thompson would concur in the proposal.

location of such facilities to their reservations.[18] It was not clear whether new compacts for the applicant tribes would have been required.

A final hurdle for some tribal applicants is to secure the approval of the National Indian Gaming Commission (NIGC) if the tribes enter into contracts for the management of their gaming operation. From the beginning, the Hudson Dog Track proposal contemplated that the non-Indian gaming interests (Galaxy Gaming) which developed the casino proposal would actually conduct the gaming operations under a joint operating agreement with the tribes. IGRA specifically requires the NIGC to approve such operating agreements, in order to make sure the Indian tribe is the primary beneficiary of the gaming operation. See 25 U.S.C. §§ 2710(d)(9); 2711(b),(c),(d),(f),(g), and (h). In this case, NIGC had notified the tribes by letter of June 21, 1995, that the tribes' joint operating agreement with Galaxy Gaming contained insufficient information in six of eight areas required to be addressed by NIGC. The NIGC letter stated that because the agreement did not comply with IGRA and applicable regulations, NIGC had not completed a "detailed review" of the agreement. The NIGC letter asked the tribes to notify the Commission within thirty days whether they would withdraw their request for approval (with the possibility of resubmitting it with the deficiencies cured) or have the Chairman of the NIGC "take formal action" on it (to disapprove the application). Because the Department rejected the proposal to take land in trust for gaming during the thirty day period, the applicant tribes never responded and NIGC has given no further consideration to the joint operating agreement.

[18] At least one of the applicant tribes was already participating in two casinos on its reservation, and may have needed to close one in order to participate in the proposed Hudson Dog Track casino. This circumstance would have been relevant to the issue of whether the Hudson Dog Track proposal was in the best interests of this Tribe.

Mr. BURTON. Let me preface my remarks by saying that we are not impugning the integrity of any of the civil servants. What we are trying to do is to get at the facts regarding possible political influences being exerted into this matter through political contributions and other avenues, and we are concerned that decisions or recommendations that were made in Ashland, WI, by the career staff, and Minneapolis, MN, by the career staff were reversed at the top levels of our Government in the Interior Department, and whether or not those decisions were reversed because of political contributions which came in. So we are not trying to impugn the integrity of any of the civil servants, because we believe that they largely do a very good job.

Mr. Secretary, are you prepared to represent today to the House that all, all responsive documents that have been subpoenaed have been produced to this committee?

Secretary BABBITT. Mr. Chairman, to the very best of my knowledge, this Department has undertaken the most exhaustive search we have ever made and produced every single document that we have found, yes.

Mr. BURTON. Well, thank you. I appreciate that.

Mr. WAXMAN. Mr. Chairman, could we have the Secretary pull the mic a little closer.

Mr. BURTON. Yes. Would you pull it a little closer.

The reason I ask that question is because we have asked the counsel for the President on a number of occasions if we had all the documents and they say we do, and then 2 or 3 weeks later we get another two or three boxes and so on.

Secretary BABBITT. Mr. Chairman, I can only answer for the Interior Department.

Mr. BURTON. I understand, Mr. Babbitt.

Could you tell us what you have personally done to make sure that all the records that we have asked for have been provided?

Secretary BABBITT. Mr. Chairman, the document search was conducted under a process that was established by the solicitor. He is here and I am certain he could provide you that information.

Mr. BURTON. But to the best of your knowledge, we have all the documents we requested?

Secretary BABBITT. Yes.

Mr. BURTON. You yourself have indicated that you wanted all the facts and the information out. In keeping with your commitment, this committee voted yesterday to make all of the documents pertaining to this investigation public. So I thought we would inform you of that. We intend to turn these documents over to the chairman of the Interior Committee, Chairman Young and Chairman Pombo, chairman of the Subcommittee on the Resources Committee, to further review these matters and address any legislative remedies that need to be passed.

Now, in a deposition last fall with the Senate, your longtime close friend, to whom you alluded in your opening remarks, a law school classmate and former campaign manager, Paul Eckstein, testified under oath before the Senate Governmental Affairs Committee as follows regarding the rejection of the Hudson Casino application on July 14, 1995. Quote: "The Secretary responded that he had been directed by Harold Ickes to issue the decision that day.

. . . and the Secretary said at some point when we were standing up, he asked me rhetorically, 'Do you know how much,' I believe it was 'these tribes,' had contributed to either the Democrat party or the Democrat candidates or the DNC? I said, I don't have the slightest idea, and he responded by saying, Well, it's in the order of a half a million dollars or something like that."

Mr. Secretary, in your opening remarks you alluded to part of that statement, but you didn't say anything about the comment that he is talking about here where you said, Are you aware of how much money is given to the DNC by these individuals. Now, do you recall saying that to him?

Secretary BABBITT. Mr. Chairman, that assertion, as I understand it, by Mr. Eckstein did not appear in his affidavit filed in the civil litigation. It is my understanding that that assertion was made for the first time several months ago in the context of Thompson committee hearings.

Mr. BURTON. Yes, Mr. Secretary.

Secretary BABBITT. I have no recollection of such a discussion.

Mr. BURTON. So you are saying that Mr. Eckstein was in error when he said that?

Secretary BABBITT. Mr. Chairman, I can only tell you that I have no recollection of that, of such a discussion.

Mr. BURTON. But you recall part of the statement. In your opening remarks you referred to about half of what Mr. Eckstein alleged was said, but the part that alludes to do you know how much these Indian tribes have given in contributions, you do not recall. You say you recall half of it but not the other half?

Secretary BABBITT. I have no recollection of such a discussion.

Mr. BURTON. Now, Mr. Secretary, you initially denied this account in your July 14, 1995, meeting with Mr. Eckstein in this letter to Senator McCain on August 30, 1996; didn't you?

Secretary BABBITT. No, I did not. That is not correct.

Mr. BURTON. Well, you said, "I must regretfully dispute Mr. Eckstein's assertion that I told him that Mr. Ickes instructed me to issue a decision in this matter without delay." That is a direct quote from your letter.

Secretary BABBITT. Well, let me, if I may, Mr. Chairman. First of all——

Mr. BURTON. Let me put up on the screen, if I might, so everyone can see it, that is exhibit 337A–1 through A–2.

[Exhibit 337 follows:]

THE SECRETARY OF THE INTERIOR

WASHINGTON

AUG 30 1996

Honorable John McCain
United States Senate
Washington, D.C. 20510-0303

Dear Senator McCain:

I apologize for the delay in responding to your letters of July 19 and 25, 1996, concerning allegations made in a July 12, 1996 Wall Street Journal article. This article falsely insinuated that this Department has allowed campaign contributions to dictate Indian policy.

I am enclosing two memoranda that answer most of the questions you ask. The first describes the background of the matter in question, and the contacts made by officials in the Executive Office of the President on that matter. It was prepared by Heather Sibbison, assistant to Counselor John Duffy (who, as you know, recently returned to private law practice). The second is a memorandum from the Solicitor discussing the court decision addressed in your July 25 letter.

Your letter also inquired about communications directly involving me. I have no recollection of being contacted by attorney Patrick O'Connor on this matter, nor do I recall ever being informed by anyone in the Executive Office of the President of Mr. O'Connor's involvement. Further, like members of my staff, I did not learn of the April 25, 1996 letter from the Director of the Minnesota Indian Gaming Commission until well after the decision on the trust land application was made, and I had no knowledge of any meetings, memoranda, telephone calls or any other communications between Executive Office persons and tribal representatives opposed to the acquisition discussed in your July 19 letter.

I met with Mr. Paul Eckstein, an attorney for the three tribes applying for the trust land acquisition, shortly before a decision was made on the application. Following this conversation, I instructed my staff to give Mr. Eckstein the opportunity to discuss the matter with John Duffy. I must regretfully dispute Mr. Eckstein's assertion that I told him that Mr. Ickes instructed me to issue a decision in this matter without delay. I never discussed the matter with Mr. Ickes; he never gave me any instructions as to what this Department's decision should be, nor when it should be made.

EXHIBIT
337 A-1

To the best of my recollection I have never been contacted by "top-level White House staff" on any Interior Department decision directly affecting Indian tribes nor, to the best of my recollection, have I ever been contacted by any official from the Democratic National Committee trying to influence the Department's decisionmaking process on such decisions.

Like you, I believe that this Department should make decisions like this one wholly on the merits, without any regard to campaign contributions or other partisan political considerations. We did just that in this matter.

Over the years, you and I have worked together on a wide variety of issues affecting Native Americans, with what I believe has been a shared determination to do our best to discharge our trust obligations in a nonpartisan manner. I regret that, relying solely on a newspaper article, you have chosen to so publicly call into question the integrity of our decisionmaking on this matter. I am pleased to have the opportunity to set the record straight.

Sincerely,

Enclosures

Secretary BABBITT. My letter of August 30th was in response to Senator McCain's letter of July 19th. Now, here is what Senator McCain asked me in the July 19th letter. He says: Mr. Eckstein has sworn that you told him that Ickes had called you and told you the decision had to be issued that day.

Now, I did not tell him that Ickes had called me. I did not tell him that Ickes had told me that the decision had to be issued that day. And in my response to Senator McCain, I said, I must regretfully dispute Mr. Eckstein's assertion that I told him that Mr. Ickes instructed me, et cetera.

Mr. BURTON. That is a fine line you are drawing there.

Secretary BABBITT. Mr. Chairman, that is not a fine line. It is not a fine line at all. Senator McCain is saying: Did you tell him that Ickes had called you. The answer is, I did not. Did you say that Ickes told me that the decision had to be issued that day? No. And that is not a very fine line. It is a bright one.

Mr. BURTON. Well, so now your story is that you did say something——

Secretary BABBITT. Mr. Chairman, that is not my story now. That is contained in a letter that was written on August 30, 1996.

Mr. BURTON. Mr. Secretary, if you would let me conclude my questions and then I will allow you adequate time for answering. If you wouldn't interrupt me, I will try not to interrupt you.

Now, your story is that you did say something to this effect, and in particular you stated in an October 10, 1997, letter to Senator Thompson, "I do believe Mr. Eckstein's recollection that I said something to the effect that Mr. Ickes wanted a decision is correct."

Now, you said that. That is exhibit 345B–1 and 2. Do you recall that?

[Exhibit 345 follows:]

THE SECRETARY OF THE INTERIOR
WASHINGTON

October 10, 1997

Honorable Fred Thompson
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I understand your staff has requested written notification of my decision not to be privately interviewed on issues relating to the Department's denial of an application by three tribes in Wisconsin to place a parcel of land located in Hudson, Wisconsin in trust for a casino development.

Let me explain the reason for my decision against a private interview. Given that numerous allegations are now being aired in public before the Committee, I would respectfully request that the Committee make any inquiries of me in public as well. I of course remain fully willing to respond in public at any convenient time.

I am troubled by the fact that at least one deposition taken by your staff on this matter, that of Mr. Paul Eckstein, has found its way into the news media, while it and others taken by your staff remain unavailable to the public. The result has been the circulation of a good deal of incorrect information as to what actually occurred with respect to the tribal application here.

For example, while I did meet with Mr. Eckstein on this matter shortly before the Department made a decision on the application, I have never discussed the matter with Mr. Ickes or anyone else in the White House. Mr. Ickes never gave me instructions as to what this Department's decision should be, nor when it should be made.

I do believe that Mr. Eckstein's recollection that I said something to the effect that Mr. Ickes wanted a decision is correct. Mr. Eckstein was extremely persistent in our meeting, and I used this phrase simply as a means of terminating the discussion and getting him out the door. It was not the first time that I have dealt with lobbyists by stating that the Administration expects me to use my good judgment to resolve controversial matters in a timely fashion, nor do I expect it to be the last.

The Indian Gaming Regulatory Act (IGRA) lays out how the Department should make decisions on applications like this one, which was a request to take land not contiguous to an existing reservation into trust for gaming purposes. Indeed, the land applied for here is located between 85 and 188 miles from the reservations of the three applicant tribes.

Section 20 of IGRA says that the decision shall be made after consultation with the applicant tribe and "appropriate State and local officials, including officials of other nearby Indian tribes." Further, applications may be approved only if the Department determines that a "gaming establishment on [the] lands [proposed to be acquired] would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community."

In conducting the consultations required by this section, the Department learned that a Wisconsin Indian tribe situated within 50 miles of the land was adamantly opposed to the application because of the detrimental effect on its own gaming operation. (The three applicant tribes, incidentally, were already operating casino gaming on their own reservations, under compacts approved by the Department of the Interior.)

Further, these consultations revealed that local communities surrounding the land were, contrary to recent press reports, strongly opposed to the concept of developing a casino on the property. The Hudson City Council adopted a resolution expressing opposition, as did the nearby Town of Troy. The Department also received several letters signed by state and local elected officials, including the Wisconsin State Representative in whose district the land is located, expressing strong opposition to casino gaming on the site.

Given the strong opposition of the neighboring tribe and the local communities, and the distance of the site from the three applicant tribes - all undisputed facts in the record before the Department - the Department declined to take the land into trust.

Your staff has already spent many hours deposing officials of this Department who were directly involved in this decision, and who have provided full explanations of the Department's decisionmaking. Yet these basic facts were not presented during the Committee's discussion of this issue this week nor in any other documents that have found their way to the media.

I reiterate my willingness to address this matter publicly before the Committee.

Sincerely,

Secretary BABBITT. Yes, sir.

Mr. BURTON. And then during your testimony on October 30, 1997, you stated, "I do not recall exactly what was said. On reflection, I probably said that Mr. Ickes . . . wanted the Department to decide the matter promptly." That is exhibit 366–2. And in your Senate testimony, you explained this change in your story as just an excuse to get Mr. Eckstein out of your office; isn't that correct?

Secretary BABBITT. In my testimony, in the Thompson letter, I said that Mr. Ickes—my best recollection of what I said to Eckstein is that Ickes wanted or expected a decision promptly. Now, that is not in conflict with my response to Senator McCain.

Mr. BURTON. And you don't recall saying anything about the money that Indian tribes contributed; you don't recall anything about that?

Secretary BABBITT. I do not recall a discussion to that effect.

Mr. BURTON. Mr. Eckstein was your close personal friend and campaign manager and confidant and he obviously just made that up.

Secretary BABBITT. I do not recall a discussion to that effect.

Mr. BURTON. Yet, you are aware that Mr. Eckstein testified that you made that statement about Harold Ickes at the beginning of your meeting and he continued to stay in your office; isn't that correct?

Secretary BABBITT. Mr. Chairman, I don't recall exactly when the issue of Harold Ickes arose. I can tell you that I made an excuse to ease—I had told Mr. Eckstein I couldn't do anything for him. I made an excuse to the effect that, Look, I have got to get this done; Ickes expects or wants me to make a decision promptly.

Mr. BURTON. But in your Senate testimony, you indicated that it was the end of the meeting when you stood up and he was leaving that——

Secretary BABBITT. Mr. Chairman, I did not indicate that. Which Senate testimony are you referring to?

Mr. BURTON. Well, was it at the beginning or the end of the meeting that you made this comment to Mr. Ickes; do you recall?

Secretary BABBITT. Mr. Chairman, I do not recall.

Mr. BURTON. Is it still your testimony today that the only reason you mentioned Harold Ickes was to get Mr. Eckstein out of your office?

Secretary BABBITT. That is correct, to—I made an excuse. Obviously, I regret having made that excuse, but that is what it was, nothing more.

Mr. BURTON. But you lied to your friend?

Secretary BABBITT. I made an excuse to——

Mr. BURTON. Was it truthful? Did you talk to Mr. Ickes? Was it truthful that Mr. Ickes asked you to do anything on this? If you didn't have any contact, then you misled your friend.

Secretary BABBITT. In the McCain letter, I was asked whether Ickes had called me and told me the decision had to be answered. My response to Senator McCain was, I dispute that; I didn't say that. That is my letter of August 30, 1996, and it is my testimony today.

Mr. BURTON. So of all the people at the White House whose names you could have invoked, such as Chief of Staff Panetta or

others in leadership there, anybody else, you chose Harold Ickes to invoke. And why did you pick Harold Ickes' name?

Secretary BABBITT. Simply because Harold Ickes was my liaison on these kinds of Interior matters at the White House.

Mr. BURTON. And he was deeply involved in the fund-raising aspect of the White House and the Democratic National Committee.

You are aware that Mr. Ickes' office had been asked by numerous sources to influence this decision; are you not?

Secretary BABBITT. As a result of the testimony in these proceedings, yes, I am aware of that.

Mr. BURTON. And you are aware that Mr. Ickes was contacted by DNC Chairman Don Fowler who pleaded the case for the Hudson Casino opponents? That was in the May 5 memo, exhibit No. 310. I direct your attention to the top of the memo which denotes Democrat or DNC supporters oppose the project. DNC supporters oppose the project.

[Exhibit 310 follows:]

MEMORANDUM

To: Harold Ickes

Fr: Doe Fowler

Dt: May 5, 1995

Re: Indian Gaming Issue

This to follow up our conversation regarding the Hudson Wisconsin Casino proposal. Below is an outline of the issues raised during my meeting with several tribal leaders and DNC supporters who oppose the project. I've also attached a Peat Marwick impact study forwarded by our supporters. Please let me know how we might proceed. Thanks for your attention.

•The proposal to convert a dog track to a casino is being pushed by American Indian tribes who are supporters of Governor Thompson who is opposed to gaming, but would let stand the Interior Secretary's designation of the project as "land in trust" and thus eligible to establish a gaming operation.

•The current owners of the dog track operate out of Buffalo, NY and so Sen. D'Amato is advancing their proposal at the Interior Department, where the decision to grant the land in trust is made at the "discretion" of the Secretary.

•The tribes--Wisconsin St. Croix and Ho-Chunk, Minnesota Shakopee Sioux, Upper Sioux, Prairie Island Sioux and Mille-Lac Lake--I met with argue that their gaming operations will be adversely impacted if the project is granted "land in trust".

•The above tribes would like an opportunity to present their impact study to the Interior Secretary or the appropriate Administration officials in response to the study submitted by the Hudson tribes.

Secretary BABBITT. Yes. I see the memo. I am not sure—I don't believe I have seen this memo before. I know it is in the record. But this is one of these endless communications outside the Interior process and I have, therefore, not spent much time with them. I may have read this. I don't think I have.

Mr. BURTON. Are you aware that Mr. Ickes was contacted by Mr. Schneider at or around May 16, 1995? Who asked that Mr. Ickes contact the Interior Department on behalf of the opposing tribes? That is exhibit No. 346. Mr. O'Connor testified to that effect yesterday.

Secretary BABBITT. I am sorry, testified to what effect?

Mr. BURTON. Mr. O'Connor testified to the effect that Mr. Ickes was contacted by his partner, Mr. Schneider, on or about May 16, 1995, and asked that he contact Mr. Ickes——

Secretary BABBITT. I think I can say, without having seen the memo, that I have no knowledge of that.

Mr. BURTON. It is interesting, though, that this is a real coincidence that Mr. Schneider and Mr. Fowler and others were talking to Ickes about this matter and even the President asked that Mr. Ickes look into it. Mr. Ickes was asked by a number of people to look into this and talked to the Interior Department about it, and you mentioned to your former partner and friend and campaign manager that Mr. Ickes was asking that this thing be denied. And it just seems like a real coincidence, of all the people at the White House, that he is the one you mentioned to Mr. Eckstein. Don't you think that is an unusual coincidence?

Secretary BABBITT. Mr. Chairman, you can manufacture all the conspiracies you want. The plain fact is that at the end of the day the facts are the facts. I have just given them to you.

Mr. BURTON. Are you aware of a May 18, 1995, memo to Harold Ickes from his staff which indicated that the Interior Department staff had made the decision to reject the casino application in a May 17, 1995, memo?

Mr. LESHY. Could you give us an exhibit number, please?

Mr. BURTON. That is exhibit 312, pardon me.

[Exhibit 312 follows:]

May 18, 1995

EMORANDUM FOR HAROLD ICKES

ROM: JENNIFER O'CONNOR

UBJECT: INDIAN GAMING IN WISCONSIN

ne attached information from Patrick O'Connor refers to a proposal at Interior to allow three 'isconsin tribes to establish a casino at a bankrupt dog track in Hudson, Wisconsin.

he Secretary of the Interior has the discretionary ability to create trust lands to enable the ibes to establish the casinos. However, by statute, he must first assess the economic costs id benefits to the local community.

ne Department is reviewing the proposal. Staff met last night and came up with a eliminary decision, which will likely not be final for another month. The staff believe it is obably a bad idea to create the trust land to allow the establishment of the casino. Their asons are as follows (NOTE -- this information is not public and is confidential at this int.):

The local community is almost uniformly opposed to the proposed casino. The tribes that want to establish it live 250 miles away, but no one in the immediate area wants it established, including the Mayor, City Council, other local officials and Congressman Gunderson. The Department feels that this local opposition is an indication of adverse impact on the local community.

The Minnesota delegation is also uniformly opposed to the proposal. Minnesota tribes located near the state border feel they would be adversely impacted by the competition.

It is likely that a decision to approve this proposal would result in a spotlight being shone on the Indian Gaming Regulatory Act, which is under some legislative pressure at the moment. The Department wants to avoid this kind of negative attention to the Act.

ne other side of the argument is the support of free market economics. Some Department aff think the bottom line here is the Minnesota and Wisconsin tribes who are benefitting normously from gaming don't want the competition, and are able to hire bigger lobbyists an the three very poor tribes who want the casino. However, the staff don't think this gument negates the uniform opposition from the local community.

ne current status is this: the Department is reviewing the comments received during the mment period which ended April 30. It has committed to making a final decision within a onth.

EOP 064394

EXHIBIT

312

Secretary BABBITT. Yes, I believe I saw this memo for the first time in the course of the Thompson committee investigation.

Mr. BURTON. Do you know why a decision that was supposedly not made until 2 months later was being represented to Harold Ickes as having been essentially decided?

Secretary BABBITT. Where does it say that?

Mr. BURTON. The date of the memo is May 17, the memo you have before you, or May 18, and that memo to Harold Ickes from his staff indicated that the Interior Department had made the decision. This was from his staff. It says, "Staff met last night and came up with a preliminary decision, which will likely not be final for another month. The staff believe it is probably a bad idea to create the trust land to allow the establishment of the casino. Their reasons are as follows:" And then it goes on. But this memo was 2 months after the decision was made. Can you explain that?

Secretary BABBITT. Mr. Chairman, sure. You have heard testimony from George Skibine, from Tom Hartman, from Mike Anderson, from John Duffy, from other officials who have described in great detail the process of a consensus-based discussion that moved this decision through the process toward the final decision made by Mike Anderson.

Mr. BURTON. What I don't understand, Mr. Secretary, is that this was a confidential memo and the Indian tribes that were making the application who should have been involved in the process to try to correct any problems that may have occurred weren't even aware of it. And yet it appears as though from this memo that was sent to Mr. Ickes, for what reason I know not, other than to inform him, that the application was probably going to be declined. The decision had already been made or was about to be made and it wasn't made known until 2 months later. The Indian tribes that were going to be turned down weren't even made aware of it or given an opportunity, which should have been the case, according to the law as I understand it and weren't informed about this. Why is that?

Secretary BABBITT. Mr. Chairman, you are incorrect. Those facts are simply not supported in the record.

Mr. BURTON. Explain, if I am incorrect.

Secretary BABBITT. You have heard testimony from George Skibine, and I believe others, that the tribes were consulted with. They met with officials in the Department during that time and those issues were discussed. That is clearly laid out in the record.

Mr. BURTON. Well, the tribes in question weren't even involved in the meeting for 6 weeks.

Secretary BABBITT. Mr. Chairman, George Skibine testified to that very issue just crystal clear. He said, as I recall, how he came to the Department, how those letters went out, and to the substantive course of consultation.

Mr. BURTON. The Indian tribes that testified before us said they were not involved in any meetings. They did not know about that until 6——

Secretary BABBITT. Mr. Chairman, the record clearly shows to the contrary.

Mr. BURTON. The record, I don't believe, shows that. I will not go into all the details, but the Skibine testimony does not reflect that.

Are you aware that Mr. Ickes has little memory of any of these contacts or events?

Secretary BABBITT. I have not discussed this matter with Harold Ickes and I did not watch his testimony to the Thompson committee. Has he testified to this committee?

Mr. BURTON. No, the reason he did not testify to this committee, and I will answer my colleague, Mr. Waxman's comments that were made, is because he was deposed by the Senate. We did have access to those depositions. He testified. So we pretty much had the information we wanted from Mr. Ickes. We didn't want to be any more redundant, and my colleagues on the other side have been concerned about redundancy, so we wanted to accommodate them.

Skibine said, incidentally, this is a question, but prior to the rejection of the application, that is the easy way to do it, to tell people in advance what the problems are and to let them cure them? And his answer was, Yes, we could have done that. That is not the way I did this first application. That is not the way we did it at this point.

So as far as informing them——

Secretary BABBITT. Mr. Chairman, I disagree. The record——

Mr. BURTON. This is Mr. Skibine's testimony. That is a direct quote from Mr. Skibine.

Secretary BABBITT. The record clearly shows that these folks had ample opportunity to discuss their application with Department officials.

Now, in addition to that, in the record there is a transcript of my discussion with the Wisconsin tribes, I believe in early April, the Listening Conference that I held in Wisconsin. These are regular events that I hold statewide with Indian tribes on an irregular basis.

The Wisconsin Listening Conference involved a general discussion of this issue, and, from my perspective, I clearly laid out in my remarks, and there is a transcript of them, that the issue with off-reservation gaming was the issue of community support. I said, this Department is not willing to cram casinos down the throats of unwilling communities. I explained it in some detail. Just personally.

Mr. BURTON. Let me move on because we have a limited amount of time. If you could keep your answers as concise as possible, it would help us expedite this.

Are you aware that Mr. Fowler sometimes remembers little about these events, except that he contacted someone unknown at the Interior Department. Would you happen to have learned from anyone who that person he contacted might be?

Secretary BABBITT. I have asked that question, and the answer is that we have not been able to document a call by Fowler to which someone actually responded and talked with Mr. Fowler. I can tell you that it was not me.

Mr. BURTON. See, one of the things that is troubling to us is Mr. Ickes doesn't remember. Mr. Fowler doesn't remember. You don't know anybody over at the Department that was contacted, and yet

Mr. Fowler says he did contact someone. So it is troubling when we are trying to get at the facts when people have this memory loss.

Now, let me give you some examples of the coincidences here. Yesterday, Mr. O'Connor, DNC trustee and lobbyist for the wealthy tribes opposing this application, testified that on July 14, 1995, the day the rejection letter was sent out on the Hudson Casino application, and that is exhibit 328, his billing records for that day, which is exhibit 356–45, reflect his reference to fund-raising strategy. And he says, "Harold Ickes, Terry McAuliffe and DNC Chairman Don Fowler."

Doesn't that seem like a remarkable coincidence, Mr. Secretary, that he refers to all of them, same day, July 14th, that this meeting took place?

[Exhibits 328 and 356–45 follow:]

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

TAKE PRIDE IN AMERICA

JUL 14 1995

Honorable Rose M. Gurnoe
Tribal Chairperson
Red Cliff Band of Lake Superior Chippewas
P.O. Box 529
Bayfield, Wisconsin 54814

Honorable Alfred Trepania
Tribal Chairperson
Lac Courte Oreilles Band of Lake Superior
Chippewa Indians
Route 2, Box 2700
Hayward, Wisconsin 54843

Honorable Arlyn Ackley, Sr.
Tribal Chairman
Sokaogon Chippewa Community
Route 1, Box 625
Crandon, Wisconsin 54520

Dear Ms. Gurnoe and Messrs. Trepania and Ackley:

On November 15, 1994, the Minneapolis Area Office of the Bureau of Indian Affairs (BIA) transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes") to place a 55-acre parcel of land located in Hudson, Wisconsin, in trust for gaming purposes. The Minneapolis Area Director recommended that the decision be made to take this particular parcel into trust for the Tribes for gaming purposes. Following receipt of this recommendation and at the request of nearby Indian tribes, the Secretary extended the period for the submission of comments concerning the impact of this proposed trust acquisition to April 30, 1995.

The property, located in a commercial area in the southeast corner of the City of Hudson, Wisconsin, is approximately 85 miles from the boundaries of the Lac Courte Oreilles Reservation, 165 miles from the boundaries of the Red Cliff Reservation, and 188 miles from the boundaries of the Sokaogon Reservation. The St. Croix Band of Chippewa Indians, one of the eight Wisconsin tribes (not including the three applicant tribes), is located on a reservation within the 50-mile radius used by the Minneapolis Area Director to determine which tribes can be considered "nearby" Indian tribes within the meaning of Section 20 of the Indian Gaming Regulatory Act (IGRA).

EXHIBIT
328-1

Section 20 of the IGRA, 25 U.S.C. § 2719(b)(1)(A), authorizes gaming on off-reservation trust lands acquired after October 17, 1988, if the Secretary determines, after consultation with appropriate State and local officials, including officials of other nearby tribes, and the Governor of the State concurs, that a gaming establishment on such lands would be in the best interest of the Indian tribe and its members and would not be detrimental to the surrounding community.

The decision to place land in trust status is committed to the sound discretion of the Secretary of the Interior. Each case is reviewed and decided on the unique or particular circumstances of the applicant tribe.

For the following reasons, we regret we are unable to concur with the Minneapolis Area Director's recommendation and cannot make a finding that the proposed gaming establishment would not be detrimental to the surrounding community.

The record before us indicates that the surrounding communities are strongly opposed to this proposed off-reservation trust acquisition. On February 6, 1995, the Common Council of the City of Hudson adopted a resolution expressing its opposition to casino gambling at the St. Croix Meadows Greyhound Park. On December 12, 1994, the Town of Troy adopted a resolution objecting to this trust acquisition for gaming purposes. In addition, in a March 28, 1995, letter, a number of elected officials, including the State Representative for Wisconsin's 30th Assembly District in whose district the St. Croix Meadows Greyhound Track is located, have expressed strong opposition to the proposed acquisition. The communities' and State officials' objections are based on a variety of factors, including increased expenses due to potential growth in traffic congestion and adverse effect on the communities' future residential, industrial and commercial development plans. Because of our concerns over detrimental effects on the surrounding community, we are not in a position, on this record, to substitute our judgment for that of local communities directly impacted by this proposed off-reservation gaming acquisition.

In addition, the record also indicates that the proposed acquisition is strongly opposed by neighboring Indian tribes, including the St. Croix Tribe of Wisconsin. Their opposition is based on the potential harmful effect of the acquisition on their gaming establishments. The record indicates that the St. Croix Casino in Turtle Lake, which is located within a 50-mile radius of the proposed trust acquisition, would be impacted. And, while competition alone would generally not be enough to conclude that any acquisition would be detrimental, it is a significant factor in this particular case. The Tribes' reservations are located approximately 85, 165, and 188 miles respectively from the proposed acquisition. Rather than seek acquisition of land closer to their own reservations, the Tribes chose to "migrate" to a location in close proximity to another tribe's market area and casino. Without question, St. Croix will suffer a loss of market share and revenues. Thus, we believe the proposed acquisition would be detrimental to the St. Croix Tribe within the meaning of Section 20(b)(1)(A) of the IGRA.

We have also received numerous complaints from individuals because of the proximity of the proposed Class III gaming establishment to the St. Croix National Scenic Riverway and the potential harmful impact of a casino located one-half mile from the Riverway. We are concerned that the potential impact of the proposed casino on the Riverway was not adequately addressed in environmental documents submitted in connection with the application.

Finally, even if the factors discussed above were insufficient to support our determination under Section 20(b)(1)(A) of the IGRA, the Secretary would still rely on these factors, including the opposition of the local communities, state elected officials and nearby Indian tribes, to decline to exercise his discretionary authority, pursuant to Section 5 of the Indian Reorganization Act of 1934, 25 U.S.C. 465, to acquire title to this property in Hudson, Wisconsin, in trust for the Tribes. This decision is final for the Department.

Sincerely,

Michael J. Anderson

Michael J. Anderson
Deputy Assistant Secretary - Indian Affairs

cc: Minneapolis Area Director
National Indian Gaming Commission

EXHIBIT
328-3

687077	07/14/95	PJO	PJO	B	1 50	225 00	337 50	1 50	337 50	Department of Justice inquiry; discussions with aides to House Native American Subcommittee. Meeting with Larry Kitto in Minneapolis; Discussion regarding need to go to Hudson, WI and visit with city council members and city attorney; Discussion regarding necessity to follow-up with Harold Ickes at the White House, D Fowler at DNC and Terry Mac at the Committee to Re-elect, outlining fund raising strategies
686020	07/14/95	TJC	TJC	B	2 00	250 00	500 00	2 00	500 00	Discussions with L Kitto; discussions with aides to House Native American Subcommittee; discussions with partners regarding further involvement of White House and Secretary Babbitt; discussions with Frank Ducheneaux regarding George Skivine, head of the relevant agency within the Interior Department involved with the Hudson project; discussions with aides to Minnesota Congressional delegation
686669	07/17/95	TJC	TJC	B	2 00	250 00	500 00	2 00	500 00	Discussions with P O'Connor; discussions with L Kitto; discussions with aides to Congressman Longley; discussions with aide to Congressman Metcalf; memorandum to L Kitto
686671	07/18/95	TJC	TJC	B	2 00	250 00	500 00	2 00	500 00	Memorandum to Lewis Taylor; memorandum to L Kitto; discussions with BIA public information officials; discussions with aides to BIA gaming office; discussions with Lewis Taylor; meeting with Tim Glidden, Counsel to the House Native American Subcommittee
687085	07/19/95	PJO	PJO	B	1 50	225 00	337 50	1 50	337 50	Long distance discussions with Chairman Fowler regarding Department of Interior decision to reject an application for a casino at the Hudson, WI dog track; Sending faxes to Chairman Fowler; Reporting to T Carcoran and L Kitto regarding criteria voiced b y opposition
686682	07/19/95	TJC	TJC	B	2 00	250 00	500 00	2 00	500 00	Discussions with P O'Donnell; memorandum to Don Fowler, Chairman of the Democratic National Committee; meeting with aides to Congressman Jack Metcalf and Congressman Jones
687086	07/20/95	PJO	PJO	B	1 00	225 00	225 00	1 00	225 00	Briefing Larry Kitto on my conversations with Chairman Fowler of the DNC. Discussion regarding thank you letters to White House and members of the congress. Discussion regarding fund raising
686697	07/20/95	TJC	TJC	B	1 50	250 00	375 00	1 50	375 00	Memorandum to L Kitto; discussions with aide to House Native American Subcommittee; letter to Senator McCain regarding favorable Hudson decision for client
686571	07/21/95	PDD	PDD	B	1 00	250 00	250 00	1 00	250 00	Review ruling by Interior Department declining request for certification via assistance given by Senator McCain; cosign thank-you letter to Senator McCain for his assistance thereon
686700	07/21/95	TJC	TJC	B	2 00	250 00	500 00	2 00	500 00	Discussions with L Kitto; review draft thank-you letters for tribal leaders; review memorandum from L Kitto; discussions with

EXHIBIT
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Secretary BABBITT. Mr. Chairman, half the lobbyists in this town claim credit for the sunrise at least once a week. And it is pretty clear to me, I have not seen—those things were happening outside the Department. And I have, and had, no knowledge of what is going on outside the Department. But it doesn't seem unusual for a lobbyist to get set to claim credit as the sun comes over the horizon.

Mr. BURTON. Are you aware that Mr. Ickes was a central person at the White House overseeing fund-raising for the DNC in the Clinton/Gore 1996 campaign?

Secretary BABBITT. I believe that I was aware that Harold Ickes was the White House person managing the campaign, was the person managing the campaign, in the White House managing the campaign, yes, I was aware of that.

Mr. BURTON. So you were aware that Mr. Ickes was deeply involved in the fund-raising aspect of the campaign of the DNC?

Secretary BABBITT. Well, I was aware that he was involved in the management of the campaign.

Mr. BURTON. Now, on the day that you invoked Mr. Ickes' name, and Mr. Eckstein said that you asked him if he knew how much money these people raised, this was just 1 day after Mr. O'Connor's partner and longtime friend of the President, Tom Schneider, held a fund-raiser for Clinton/Gore 1996. This fund-raiser netted close to half a million dollars, $420,000, to be exact, and this is just another coincidence you would assert, I presume?

Secretary BABBITT. I was not aware of that fund-raiser.

Mr. BURTON. Just so there is no confusion, Mr. Secretary, your testimony before this committee is that neither Harold Ickes nor Don Fowler contacted you at any time alerting you to the political considerations in this decision and that the decision to reject the application for a casino at the dog track was based solely on the merits by career officials at the Interior Department. Is that correct?

Secretary BABBITT. That is correct. I had no contact on this matter with Ickes or Fowler. Who was the third one?

Mr. BURTON. I beg your pardon, sir?

Secretary BABBITT. You gave me three names. I said I had no contact with Ickes. I had none with Fowler.

Mr. BURTON. I mentioned Ickes and Fowler.

Secretary BABBITT. I have had no communications, had no communication with them. This decision was the right decision. It was made in the right way, and it was made for the right reasons.

Mr. BURTON. In light of the testimony we have heard over the 3 days of our hearings, I would like to question you in regard to some of the representations that you made in your opening statement. Essentially, you said that the decision was made by career officials of the Department of the Interior, not influenced in any way by the political concerns; is that correct?

Secretary BABBITT. The decision was made by Michael Anderson. He is a Presidential appointee.

Mr. BURTON. He is a political appointee?

Secretary BABBITT. The decision was made by Michael Anderson, a political appointee, yes.

Mr. BURTON. In your testimony, I drew from that that the career employees at the Interior Department, were making most of the representations and most of the recommendations, like Mr. Skibine.

Secretary BABBITT. Yes, I think the intent of the testimony, I suppose I should look at the language, was to emphasize that at the career level in the Department, George Skibine.

Mr. BURTON. Mr. Anderson is the one that made the final decision and signed it. He was a political appointee of the President?

Secretary BABBITT. Sure. He did that on the recommendation of Skibine.

Mr. BURTON. In fact, one of the chiefs of the tribes testified before this committee about Mr. Anderson's political activities for the Clinton campaign in 1992, while he was with the American Congress of Indians. Are you aware of that?

Secretary BABBITT. I don't believe that I even knew Michael Anderson until he came to the Department. I believe that I was aware when he came to the Department that he had been an official with the National Congress of American Indians, but that is the extent of my biographical knowledge of Michael Anderson prior to recent events and testimony.

Mr. BURTON. Mr. Secretary, you repeated before this committee the same statement that you made before the Senate Governmental Affairs Committee, that "The Department based its decision solely on the criteria set forth in Section 20 of the Indian Regulatory Gaming Act." In fact, are you aware that Mr. Skibine, the career Interior Department official who did not sign the rejection letter, testified last week that your statement was incorrect?

Secretary BABBITT. When I said that the decision was based on the criteria contained in IGRA, in the Indian Gaming Regulatory Act, essentially the same criteria are contained in the decision-making process in both. Those criteria apply and, I think that is quite clear from the letter of decision. Those criteria, detriment to the community, benefit to the tribe, are the same ones that are used on either side.

Mr. BURTON. In fact, you had to rely on a 1934 act to use your discretion to reject this application rather than solely relying upon section 20; isn't that correct?

Secretary BABBITT. Well, the decision letter speaks for itself, and the answer is that the decision letter relies on both.

Mr. BURTON. And you are aware that the career officials had recommended against using section 20 in the rejection rationale, but your counsel, Mr. Duffy, who now works for your old law firm, insisted that section 20 be cited in the rejection letter?

Secretary BABBITT. Mr. Chairman, I am mystified by how this discussion enters your conspiracy theory. The fact is that there was a lively debate. The record shows a lively debate in the Department about the grounds for decision. Either would be an adequate ground.

I believe that the people who have testified here have explained what that debate was about. I would be happy to try to recollect their testimony, but it is out there and it is on the record. It is crystal clear.

Mr. BURTON. Let us go to some of the facts, then. In July 1995, this is exhibit 323, an e-mail communication from Kevin Meisner to George Skibine, and it was dated July 6, 1995, quote, "The bald objections of surrounding communities, including Indian tribes are not enough evidence of detriment to the surrounding communities to find under section 20 of the IGRA that the acquisition for the gaming will be detrimental to the surrounding communities."

With respect to your assertion in your statement that a career civil servant's recommendation was not overruled, I would refer you to exhibit 317A, which is a June 8, 1995, draft recommending approval of the application, which specifically states, "The staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community."

In fact, the ultimate rejection letter of July 14 did overrule this career civil servant's recommendation; didn't it?

[Exhibits 323 and 317A follow:]

Author: KEVIN MEISNER at ~DOI/SOL_HQ
Date: 7/6/95 10:37 AM
Priority: Normal
TO: TROY WOODWARD
TO: George Skibine at ~IOSIAE
TO: Paula L. Hart at ~IOSIAE
TO: Tom Hartman at ~IOSIAE
TO: Larry Scrivner at ~IOSIAE
Subject: Re: 7/6/95 Meeting on Hudson Dog Track
---------- Message Contents ----------

My view on this matter is that the bald objections of surrounding communities including Indian tribes are not enough evidence of detriment to the surrounding communities to find under section 20 of IGRA that the acquisition for gaming will be detrimental to the surrounding communities.

Specific examples of detriment must be presented by the communities during the consulation period in order for us to determine that there will be actual detriment. A finding of detriment to surrcunding communities will not hold up in court without some actual evidence of detriment. In this case the gaming office did not think that the information obtained during the consultation period was enough to show actual detriment to the surrounding communities.

I think that a decision not exercise our discretionary authority to take the land into trust under 151 is enough to show surrounding communities that we take into consideration their opposition and that casionos will not be foisted upon them against their will.

EXHIBIT NO. 16
P.E. 9-29-97

EXHIBIT
323

03215

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:
Indian Gaming-Management
MS-2070

June 8, 1995

To: Director, Indian Gaming Management Staff

From: Indian Gaming Management Staff

Subject: Application of the Sokaogon Community, the Lac Courte Oreilles BAnd, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)[1]

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables.

03194

[1] References are to the application documents submitted by the Minneapolis Area Office.

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317A-1

Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period for Indian tribes in Minnesota and Wisconsin was extended to April 30, 1995 by John Duffy, Counselor to Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act. 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
Chairman, St. Croix County Board of Supervisors, Hudson, WI (Vol. III, Tab 2*)
Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

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The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)

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2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**
6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
11) Chairman, Bois Forte (Nett Lake) Reservation Business Committee (Vol. III, Tab 16***)
12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)
15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab
***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in the statement: "...it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

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317A-3

Hudson Dog Track Application

The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 -- stating that the resolution "does not retract, abrogate or supersede the April 18, 1994 Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the

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County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, "Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment ($150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

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Hudson Dog Track Application

The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1¼% of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all businesses, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its Global Gaming Almanac 1995, is expected to increase to $1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin
In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes
On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of $450 million in 1993, and $495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be $114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were $80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market of $480 million, a Non-Minneapolis Gaming Market of $220 million, and a Wisconsin Market of $500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western

Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over $600 million.

The projected Hudson market share of $80 to $115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by $50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5% ($25 million) Therefore, only $5 to $40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of $1 to $8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a $96.8 million net profit in 1993. A reduction of $8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At $96.8 million, the per enrolled member profit at Mystic Lake is $396,700. Reduced by $8 million, the amount would be $363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. I, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are not equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting a several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from $25 million in 1995 to $12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to re-order its spending plans.

Market Saturation.
The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of $500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts

1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers
The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime
Hudson Police Dept. Crime & Arrests. (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the *St. Paul Pioneer Press* with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell

3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm to Area Businesses

A. Wage Level
The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns
One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

IV. Property Values
An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bierangel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkead, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase
Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500; and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities
St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning
According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water
The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage
The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

V. Roads
The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94.

The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis

The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, " . . . it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

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317A-12

Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects $42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of $18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay $1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

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Hudson Dog Track Application

Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 -- a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians

are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto* giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

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Secretary BABBITT. Mr. Chairman, going back to the, let us see, this is exhibit 323.

Mr. BURTON. 317A.

Secretary BABBITT. This was from Kevin Meisner.

Mr. BURTON. We had two there: Exhibit 323E was an e-mail from Kevin Meisner to George Skibine. That was July 6, 1995. And the last one I alluded to was exhibit 317A.

Secretary BABBITT. I am not speaking from my personal knowledge. I am speaking from these documents and what I understand has already been said on the record. I believe that is quite clear, that Meisner's view of this was rejected in the Solicitor's Office by Bob Anderson and I think John Duffy talked about this yesterday as well.

Mr. BURTON. Bob Anderson and John Duffy both were political appointees; were they not?

Secretary BABBITT. Yes.

Mr. BURTON. And John Duffy and your former chief of staff both left your staff after the decision was made, one before and one after the decision was made to kill this application for the tribes in question, and they went to work for your old law firm and they both now represent the Shakopee tribe, which is one of the beneficiaries of this decision; is that not correct?

Secretary BABBITT. Mr. Chairman, I am sorry. Are you talking about this document or is that a question directed about Duffy and Collier?

Mr. BURTON. Let me just state quickly something that I think needs to be said. Mr. Anderson was a political appointee, Mr. Collier was a political appointee, and Mr. Duffy was a political appointee. Mr. Anderson and Mr. Duffy were involved in the decision-making process. Mr. Duffy and Mr. Collier left your employ at the Department, went to work for your old law firm. They now represent the Shakopee tribes and they are making a lot of money from the tribes that benefited from this decision. That is one of the things that concerns me a great deal.

Let me proceed on.

Secretary BABBITT. Mr. Chairman, could I respond to that?

Mr. BURTON. You can in just a moment.

Does it trouble you, Mr. Secretary that——

Mr. TIERNEY. Mr. Chairman, I think in fairness the witness ought to be able to respond to that. I think he is the one that is testifying and you are the one asking questions.

Mr. BURTON. The Chair just stated very clearly that he will be able to respond.

Mr. TIERNEY. Sometime separated from your question.

Mr. BURTON. Just a moment. I am running out of time.

Mr. TIERNEY. We will give you time, but I think he ought to have time to respond to your question when your question is made, not sometime separated later.

Mr. BURTON. The Chair has ruled that he will have time to respond to the question and he will do it in just a moment. Be patient.

Does it trouble you, in addition to the question I just asked, does it trouble you, Mr. Secretary, that a judge appointed by President Carter has noted, "that there is considerable evidence that suggests

that improper political pressure may have influenced agency decisionmaking?" That is exhibit C–106.

And also, since I will let you answer both questions, I will conclude with this one, Judge Crabb also noted the unusual brevity of the July 14, 1995, decision when she wrote, "The Indian Gaming Management Staff's first report in early February 1995 was 26 pages and the second one, dated June 8, 1995, was 17 pages. Plaintiffs pointed out also that in making a decision on a similar trust application filed by the Sault Sainte Marie Indians, the Department issued a 29-page decision, considerably longer than the 3-page decision in this case." In fact, this decision did little to explain the rationale for denying the application, didn't it, Mr. Secretary?

[The chart referred to follows:]

"[T]here is considerable evidence that suggests that improper political pressure may have influenced agency decisionmaking..."

Federal District Court Judge Barbara Crabb

Sokaogon Chippewa Communities v. Babbitt

961 F.Supp. 1276, 1286 (W.D. Wis. 1997)

Decided March 19, 1997

Secretary BABBITT. Let's see, I think I have three questions——

Mr. BURTON. Yes, sir, you do.

Secretary BABBITT [continuing]. To respond to.

With respect to the brevity of the decision document, Mr. Chairman, I think it is clear and comprehensible, if you want to compare that to Department practice, I would suggest that you look at Secretary Lujan's decision denying the Santee Sioux application in quite comparable circumstances. That decision, dated January 23, 1992, is here. So I would respectfully suggest that before anyone buys into a brevity conspiracy that you might sort of look at the practices in the Department.

Now, with respect to the Crabb opinion, Mr. Chairman, I think it is enormously misleading to continually throw this opinion up in the way you do for this reason: Judge Crabb looked at the allegations that these gambling guys are making in the pleadings in the lawsuit and looked at the paper and said, I must make a ruling that the court will hear testimony on these issues. That is what it is all about. She is saying, these gambling company allegations on their face raise issues that require testimony.

Now, what is the difference between that and here? The difference is very simple. You have been hearing testimony for 2 weeks, and what I am saying is that any fair construction of the record that has been laid out here in the last 2 weeks could only lead reasonable people to one conclusion, and that is the right decision made in the right way for the right reasons.

Mr. BURTON. Let me, just before I yield to my colleague——

Secretary BABBITT. I am sorry. There was a third question.

Mr. BURTON. Sure, go ahead.

Secretary BABBITT. Which I would like to respond to. And that is the issue of Duffy and Collier. I did not hear their testimony to you yesterday. But I have had it reported to me and I would summarize their response. Congress explicitly, by legislation, authorized this kind of representation and in fact it was legal and entirely appropriate under the rules laid down by this Congress.

Now, let me tell you that this first came to my attention, this matter, in April 1993, when a former Secretary of the Interior, a Republican named Manuel Lujan came to the Department lobbying for an Indian tribe, the Mescalero Apachees on a casino issue which had previously been under his jurisdiction at the Department of the Interior.

Now, I didn't rush after Secretary Lujan or out to the press and say, this is an outrageous example of wrongdoing because I respect Secretary Lujan. He was acting legally and properly. And the inference that just because somebody goes to represent a tribe automatically casts that suspicion, I suggest you call Manny Lujan in here and give him the kind of treatment that you have been giving Duffy and Collier.

Mr. BURTON. Before I yield to my colleague, let me just say you have used the term "conspiracy" a number of times, Mr. Secretary. I don't believe that Judge Crabb would be involved in that and her statement, which is on the screen, I think speaks for itself.

Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman. I would like that statement to stay up on the screen because there is something really

quite dishonest that is going on here. At the end there are three dots. Three dots usually mean she said something else. What that exhibit does not say is what else she said. And I want to read from her opinion.

"However, whereas here there is considerable evidence that suggests that improper political pressure may have influenced agency decisionmaking," she goes on to say, "it is necessary to allow extra record discovery to uncover whether that is true." The next sentence is, "Many of the events of which plaintiffs complain could be considered innocent in and of themselves."

What she had said in this opinion is that based on these allegations she was going to allow them to take depositions and undertake discovery. So I want that to be looked at in its entirety because that quote is being misused. If you listen to how it is misused, it is misused when the chairman says, a Carter appointee, a Democrat. Well, I don't think it makes any difference whether she was appointed by a Democrat or Republican. She is a judge. She had to make a decision not on the merits of whether there was considerable interference, but only whether she was going to allow people to look at that issue and gather evidence on it. So let's get that record straight.

Mr. Babbitt, this is our last of 4 days of hearings. Some of the people who are here today may be here for the first time. Others may not be aware of what we have heard in testimony consistently on this matter. We had decisionmakers. You are the one that signs the papers because you are the Secretary, like we sign our letters. But the truth of the matter is we have aides that write those letters or draft our record statements as you have aides who have to look at the facts and make a decision and recommendations up the line and maybe it has your imprimatur as the final decisionmaker, but others get involved. And we have had the people who were the career officials in the Department testify before us and they said they had to consider this measure, this request for a casino, on the merits and they did that and they made their recommendations.

Mr. Skibine, I think, is a 20-year career person. He looked at it, the merits and said, this application for a casino should be denied. Then his superior looked at his statement and one of his superiors said, well, I agree with your decision, but I think it ought to be denied on other grounds than the one you suggested. And then you said to us there was a debate as to what grounds to turn it down, not whether to turn it down or not, but what grounds to turn it down. And then that went to Mr. Hartman and to Mr. Anderson.

Mr. Anderson is a political appointee, but let's don't misunderstand what political appointee means. When you have a new administration, as is possible every 4 years with the election of a President, the President appoints the Secretaries for the Departments, as you were appointed by President Clinton. Some of the people under you were appointed by the President and then under them are career people. So the political people who are now required to make these decisions on the substantive issues before them in the Department of Interior got the recommendations from the career people and signed off on them.

I want to run a videotape. It was not very artfully put together. It was quickly put together, but sometimes reading testimony isn't

as good as seeing the people respond on the record. So if we could get that videotape, I would like you to see it. It is going to come on in a minute and it is going to show the questions.

[Videotape shown].

Mr. WAXMAN. That was Mr. Skibine.

[Videotape continues.]

Mr. WAXMAN. Those were the statements on the record. They involved career officials and then people who were appointed as political appointees above them. They have all testified here under oath that there was no political interference. The decision was based on the merits. I am pleased the chairman said he doesn't impugn their integrity. I think he has no basis to impugn their integrity. That is the record of these hearings.

A decision was made on the merits without political interference, but this hearing suggests that that must be wrong. It suggests it must be wrong because we knew there were people working the political process to get a different decision. Now, there are people working in the political process to get the decision that was made. But the fact that people work in the political process doesn't mean that that affected the decision. That is the key issue.

Let me just get you, for the record, Mr. Babbitt. After reviewing the testimony we just saw on the videotape, and I know you reviewed it when you looked at the record, do you have any reason whatsoever to dispute the sworn testimony of these Interior officials?

Secretary BABBITT. I have no reason to dispute their testimony. I believe that the decision was made on the merits and in the right fashion and for the right reasons.

Mr. WAXMAN. Now, let's explore the theory that is being pursued in this investigation that the White House influenced the Department's decision in the Hudson Casino matter. Did anyone in the White House ever contact you personally about the Hudson Casino application?

Secretary BABBITT. I never had a contact or discussion with anyone in the White House.

Mr. WAXMAN. You never talked with the Vice President or anyone on his staff about the Hudson Casino issue, did you?

Secretary BABBITT. I did not.

Mr. WAXMAN. You never talked to Harold Ickes about the Hudson application?

Secretary BABBITT. I have not.

Mr. WAXMAN. Did you ever have any direct contact with anyone in Mr. Ickes office about the Hudson Casino matter?

Secretary BABBITT. I have not.

Mr. WAXMAN. We have seen two documents and heard testimony describing routine status inquiries from two of Mr. Ickes' junior assistants to Heather Sibbison, who worked in your office for John Duffy. Did Ms. Sibbison ever inform of you these inquiries?

Secretary BABBITT. I was not informed of those inquiries, I believe, for the right reasons. They were utterly routine inquiries. The White House is avalanched with letters and requests from all kinds of people. The members of this committee and this Congress are among the most prolific letter writers to the White House.

Mr. WAXMAN. There is a reason for it because we are avalanched by people who are working the political process, some of whom gave us contributions; some of whom the Members hope will give a contribution. They want to know what the status of things are.

Secretary BABBITT. The White House has to have some way to answer this avalanche. The way they do it is by making staff level inquiries. It seems to me the record is quite clear about that.

Mr. WAXMAN. Staff level inquiry means they ask what the status is of the case?

Secretary BABBITT. Yes. In this case, I think a staff assistant and a college intern or a college student intern.

Mr. WAXMAN. Did Mr. Duffy or anyone else inform you about these inquiries? Ms. Sibbison did not.

Secretary BABBITT. They did not.

Mr. WAXMAN. Did anyone at all at the Department inform you that Mr. Ickes or Mr. Ickes' office had a view on the substance or timing of this Hudson decision?

Secretary BABBITT. No, they did not.

Mr. WAXMAN. Did anyone at all at the Department inform you that anyone else in the White House had a view on the substance or timing of the Hudson decision?

Secretary BABBITT. No, I have no recollection of any kind of contact from the White House at all, none.

Mr. WAXMAN. Now, the chairman said we didn't need to take Mr. Ickes' deposition. It would have been redundant. That wasn't the reason why. We have had redundant depositions of everybody else involved in this case. But what he hasn't said is what Mr. Ickes said in his deposition.

What Mr. Ickes said in his deposition, not given to us, but given to another committee, is that he had no information about this. He did not do anything about it. So we have Mr. Ickes under oath saying he didn't make the contact from the White House and we have you and all the people in the Interior Department saying they never got this contact. There is a gap between those who are supposed to be influencing you so they say they didn't do it, and you, who are supposed to be influenced, said you didn't get the message.

Now, Fred Havenick came here the other day and on our first day of hearings and he reported a conversation he had with Terry McAuliffe who, according to Mr. Havenick, Mr. McAuliffe took credit for killing the casino deal thinking apparently that Mr. Havenick wanted the casino killed even though Mr. Havenick wanted the casino approved. Mr. McAuliffe denies that this conversation ever occurred. Did Terry McAuliffe ever contact you about the Hudson application?

Secretary BABBITT. I have never spoken with Terry McAuliffe. I think I may have met him across the years. I am not sure I would recognize him if he walked into the room. In any event, I have never discussed this issue with Terry McAuliffe.

Mr. WAXMAN. Are you aware of Mr. McAuliffe or anyone working for Mr. McAuliffe contacting anyone in the Department of Interior on this issue?

Secretary BABBITT. I am not.

Mr. WAXMAN. Now, some have suggested that the Interior Department's decision was influenced by contacts by the Democratic

National Committee or outside lobbyists. We have already explored the White House. Now we are looking at the Democratic National Committee and lobbyists. Did Don Fowler or anyone else at the DNC speak with you about the Hudson application?

Secretary BABBITT. I have never had a communication from the Democratic National Committee about this matter.

Mr. WAXMAN. Has anyone at the Department of Interior told you of any contacts by Mr. Fowler or others at the DNC on the Hudson matter?

Secretary BABBITT. They have not.

Mr. WAXMAN. And did you have any knowledge at the time of the decision that Indian tribes opposed to the casino had made campaign contributions or would make future campaign contributions?

Secretary BABBITT. I did not.

Mr. WAXMAN. We have seen some evidence that lobbyists opposed to the casino made partisan political arguments to Mr. Fowler and to others. Were you aware of any of those arguments prior to July 14, 1995, the day of the decision?

Secretary BABBITT. These issues were all, I have subsequently learned, being worked outside the Department. The fact is that I had no knowledge of that process.

Mr. WAXMAN. Did you meet with any lobbyist opposed to the casino project?

Secretary BABBITT. I did not.

Mr. WAXMAN. In fact, the only lobbyist you met with on this issue was Paul Eckstein who represented Fred Havenick and Galaxy Gaming; isn't that correct?

Secretary BABBITT. That is correct. And that is what has apparently led me to have this quality time with this committee.

Mr. WAXMAN. Well, Mr. Eckstein is an old friend of yours and associate of yours in politics and business, he was hired by Mr. Havenick to try to get you to go along with Mr. Havenick's desire to have this casino approved. Now, when Mr. Eckstein came in to see you, you knew the decision was going to be against his client.

Secretary BABBITT. That is correct, yes.

Mr. WAXMAN. I suppose when a friend comes in to ask you to go his client's way, you had two choices. You could say to him, sorry, pal, I don't agree with you on the merits and I am going to, we are going to go against you. Or you can do what a lot, like a lot of people do, say, well, it is going against you, but it is not my fault. It is not a stand up kind of thing to do, and it is probably a little embarrassing for you. It is not criminal. It seems to me you chose that latter course. Is that what happened?

Secretary BABBITT. I regret it, obviously. I could have said, the answer is, no, I am not going to intervene in this process. That is the end of it. In retrospect, obviously, I could have extended the time, I could have intervened in this process and extended the time. I had the authority to do it. What I was doing was making an excuse for something that seemed, I suppose from some perspectives, a fairly, you know, innocuous request, to extend the time. I was not prepared to do that and I made an excuse.

Mr. WAXMAN. It is a human thing to do. We have on the record of these hearings lobbyists who try to take credit for things they didn't do. You were trying to divert blame for something your De-

partment was doing. It is done all the time. I guess it is called a white lie. It is an excuse.

Let me ask you about Tom Collier, your former chief of staff, and John Duffy, your former counselor. They testified yesterday that they never had any substantive discussions with you on the Hudson matter. Michael Anderson, Deputy Assistant Secretary, who made the final decision, and George Skibine, the career civil servant who recommended denial of the application, also testified that they never discussed the Hudson Casino matter with you. That was their testimony. Is their testimony correct?

Secretary BABBITT. I believe that is correct. Let me just add a postscript to that. This decision had been delegated and my policy in a decisionmaking context like this is to let the decisionmakers do it. And if there is a substantial divergence within the staff, the chances are it may bubble back up, if there is a policy decision which the staff cannot resolve. The reason that I was never drawn into a discussion of this case is because that never happened. There was virtual unanimity among the staff. There wasn't any reason for this to come to my attention.

Mr. WAXMAN. So the people who were on the staff and looking at the issue were clear in their determination on the merits to deny the casino. Is that what they wanted?

Secretary BABBITT. I am sure from time to time I, you know, had a casual report that this matter was progressing. I was probably given some information when I went to the Listening Conference in April. But there wasn't any need to get into the specific issues. My concern was the policy issues and they were in agreement as to how that policy was to be applied in this case.

Mr. WAXMAN. Hilda Manuel worked for you in the Department. She wasn't allowed to testify in the public hearing, but she gave a deposition and it is clear why she wasn't allowed to testify in a public hearing because in her deposition she said she talked to you and you said to her, I don't want to get involved in this. Let the people at the career level and all the others that work for me reach a conclusion on this. I am not going to get involved. Do you recall telling her that?

Secretary BABBITT. I do not recall that discussion. But I certainly accept it.

Mr. WAXMAN. OK. Just so—let me ask some more questions. We ought to just pin this stuff down, get it on the record just so we get a clear sense of your knowledge of the decisionmaking process. Do you remember attending an April 1995 Wisconsin tribal dialog in which the Hudson decision came up?

Secretary BABBITT. I am certain I was there. I don't have a lot of recollection of the actual meeting. I think it was on a day which I was headed up to the Menominee reservation that afternoon, but at any rate, I was there at that meeting in Wisconsin. It was a tribal Listening Conference.

Mr. WAXMAN. You made some general remarks at the dialog; is that right?

Secretary BABBITT. Yes, although my knowledge of those remarks is exclusively a result of having seen that transcript.

Mr. WAXMAN. At the time of the meeting, did you have a detailed knowledge of the Hudson application?

Secretary BABBITT. I did not. I may have been, you know, sort of informed that there was an application in the process, that it was controversial, that it involved off-reservation gaming and that was—I am inferring that. I think that is a logical inference that I went there with that kind of level of knowledge.

Mr. WAXMAN. Would it be correct to say that you had no substantive involvement in this whole Hudson decision?

Secretary BABBITT. I had no substantive involvement in this decision at all.

Mr. WAXMAN. Who made the final decision?

Secretary BABBITT. The final decision was made by Michael Anderson.

Mr. WAXMAN. Did you tell Mr. Anderson how he should decide the application?

Secretary BABBITT. I don't believe I ever discussed this issue at all with Michael Anderson.

Mr. WAXMAN. Did you give Mr. Anderson any such instructions through John Duffy, Heather Sibbison or anyone else in the Department of the Interior?

Secretary BABBITT. No, I did not.

Mr. WAXMAN. Did you suggest or even intimate to anyone at the Interior Department that the Hudson application should be denied?

Secretary BABBITT. I did not.

Mr. WAXMAN. Well, I have asked every which way. I have tried to take every possibility and make sure we have got this on the record. We have no evidence that the White House contacted you. We have clear statements that the people who presumably might have didn't. We have statements from you that you weren't contacted. We have statements from everybody involved in the decision. They made the decision on the merits without political interference. And so what we have here on this fourth day of hearings is more innuendo, innuendo that maybe there must have been something wrong because political contributions were made by the people who got their way. And that they even had a lobbyist.

Of course the other side made contributions and had a lobbyist. It is a strange coincidence that some of the people involved in the decision went to work for a law firm and represented some of the same tribes that were against this particular matter, referring to Mr. Collier and Mr. Duffy, but they testified yesterday that they went to work for this law firm. There is nothing wrong with it. They checked it out through the ethics process. Maybe we ought to tighten up the laws in this regard, but the revolving door, you indicated to us, even Secretary Lujan went through that revolving door. People go through the revolving door in this town. We would like to see it otherwise.

On the other hand, some people who go through the revolving door represent clients because they know about the issues that they spent their career working on in Government. But that doesn't mean there is anything wrong, certainly anything criminally wrong. There might have been something wrong but not criminally wrong. So what we have is innuendo. When you have the facts, the facts don't substantiate the innuendo.

I don't know how much time I have left. I have 8 minutes. I want to yield to Mr. Kanjorski some time on this.

Mr. KANJORSKI. Thank you very much, Mr. Waxman. I just want to reiterate. They didn't go to work for this law firm. They went back to work for this law firm. Both individuals testified that they came from this law firm. So it is not unusual to work for a prestigious law firm and come to Washington and serve and then return to that law firm.

Mr. Secretary, you do entertain and up until this moment, you have always entertained in this city a solid reputation for professional integrity, veracity and independence. It is unfortunate that so often some of us are able to construct incredible conspiracies that do raise questions even in the simplest of minds that maybe there is some smoke there. And if there is, maybe there is some fire there and calls upon individuals like yourself to come before a congressional committee or even worse before the media and have to prove a negative.

I have some sympathy for that. But while we were sitting here listening to this conversation of when this happened and what happened, I was thinking back that on occasions, I have had the occasion to spend time with you, and I would just love to show how little you remember of the conversations we had. And I think I could prove to the American people that so many of us in public life get to meet innumerable people in any one day and literally thousands and thousands of people in any one year have what appear to them to be very substantive conversations which they may recall in almost totality when we are called upon either to refresh our minds or to make mental notes of what happened have little or no recall, and that for the purposes of protecting ourselves very often we have people with us that keep daily journals or notes just so that we can refresh something that may have happened a week ago, a month ago, a year ago. But when it gets beyond that point, it gets awfully foggy even for the notetakers.

The only reason I believe that anyone could raise a question of what should be responded to here is this problem of your law partner, former law partner, former law school mate who is a lobbyist who I think, I am going to give my opinion, I think he took advantage, unusual advantage of a friendship, but that is not to say that all of us have not had friends that have taken advantage of a friendship when we were in public life.

I think there is no one on this committee that hasn't been called upon to have a meeting or had someone bring up at a meeting a decision or position you were going to take that you felt it was none of their business and in fact perhaps raised the level of being a conflict that they even brought it up. We have been faced with that problem of how you extricate yourself from that position. Whether or not you remember the total conversation with Mr. Eckstein or not, I can understand that. I hope the American people can.

As I understand it, it happened more than 2 years ago. It was an extraordinary thing because you were, up until that point, you had not been involved at all, but here was a man insisting on the very last day to get the last grip, to get in to see his old friend that he had served as a fund-raiser for and a campaign manager over 24 years. So you saw him and then he raised this question, but you sat there, wanted to figure out a way to respond to him without insulting him, without embarrassing him and yet in the end, on the

other hand, as I understand your testimony today, by not even taking the slightest change that you could have, you could have certainly said I will delay it for a week meaning nothing and that would have satisfied a friend and perhaps saved you some embarrassment, but you chose the methodology that we all choose at one time or another. Any of us that say we don't tell little white lies, if that is what they are called or exaggerate excuses or putting up the name, have someone else to take the fall for us, that we are just not being correct. I know that if I can't get something done, it is either the President's fault or the Cabinet officer's fault or the majority's fault or something, but we will certainly, as politicians we find it very difficult to admit that fault ourselves.

Putting all things aside, when you met with Mr. Eckstein, were you comfortable or uncomfortable?

Secretary BABBITT. Well, it was an uncomfortable situation. In the exercise of good judgment, I should have declined. First of all, I should have declined the meeting. You know, it was the first time in the course of this whole thing that I had met with any advocate or lobbyist of any kind, first time. The decision had actually, it had been made. I don't know whether it had been signed, but the decision had been made. This was a post decision meeting you know, attempting to—he was attempting to effectively get it stretched out, and that's obviously an uncomfortable situation. That is not to justify the way I handled it. It was a mistake.

Mr. KANJORSKI. The majority, in order to show something in their conspiracy theory, have shown a lot of memoranda here and other things, one being—one goes back to May that the staff for Harold Ickes, they prepared for his purposes, indicating how the decision process had been made. If anybody paid close attention to the testimony over the last 4 days, I think they would have realized that once the process was sent from the region to the national level, almost everybody on the national—everybody did agree on the national level that this was not going to be approved, and it stretched over a period of 3 or 4 months, and I don't think it was a secret that it wasn't going to be approved. It was only then whether section 20 or section 465 were going to be used for the reasons of denying the application, and that, in fact, the writer of the decision, Saturn, said that he wrote the decision sometime in early June, even though it wasn't published until July, almost a month later, and he then went on vacation and only came back several weeks after vacation to have a final cleanup. Obviously, if the decision was drafted in early June, it would not have been surprising that people would know in late May what the ultimate decision would be, or where the thrust of the decision was, saying there was no disagreement.

In any of that period of time, you could have changed that thinking. You could have interposed yourself with your staff or those decisionmakers, or talked to the White House or talked to anyone else, and yet you didn't. Your testimony today is absolutely in no way did you have direct or indirect input on the decision made on this application. And it was handled in a professional method by your staff; is that correct?

Secretary BABBITT. That is correct.

Mr. KANJORSKI. Thank you very much, Mr. Secretary.

Mr. BURTON. Mr. Wise.

Mr. WISE. How much time is there, Mr. Chairman?

Mr. BURTON. How much time remaining?

Mr. WAXMAN. I will yield the balance of my time.

Mr. BURTON. A little over a minute, Mr. Wise.

Mr. WAXMAN. I will yield to you next time.

Mr. WISE. Thank you.

Mr. Secretary, I am kind of caught by something. Were you aware or have you been aware after the fact that the local opposition was intense, including, I believe, the Governor of the State of Wisconsin?

Secretary BABBITT. I was aware of that after the fact. Now, let me just say for clarity that in reviewing the file, there is a newspaper clip from—and it's in the record, from my visit to Wisconsin in the spring—in the fall of 1994, in which I was asked about the role of the Governor in responding. Now, apart from that, I had no reason to discuss the Governor or be involved or know of his decision.

Mr. WISE. The letters I have seen suggest that the majority leader of the Wisconsin State Senate, who happens to be, as I understand it, a member of the Republican party; both sides of the aisle, Republican and Democratic Members of the House of Representatives and Congressional Delegation, including Representative Gunderson, who represented that district at the time, opposed it, and I see my time is getting short, so let me just read an excerpt and then I will wait until it rolls back around to me again.

In a letter from Representative Gunderson, he was out of office then, but in a letter to Senator Glenn as hearings were being held over there, Representative Gunderson notes, I sent a letter to the Secretary shortly thereafter stating my opposition. As I recall, the letter indicated that the decision to take the dog track into trust would be severely quote, "detrimental to the community and thus ill-advised." It is important for the committee, the Senate committee, to understand the depth of feeling in opposition to the casino at that time. It is also my impression that the opposition would be greater today. The only merit in expanding the reservation for casino purposes was to try and salvage something for the huge investment in the dog track facility.

That was a letter from the Republican—then Republican representative who represented that district concerning this matter.

So I will return to that when my time comes back. Thank you.

Mr. BURTON. Thank you, Mr. Wise. Mr. Horn, you are recognized for 10 minutes.

Mr. HORN. Thank you very much, Mr. Chairman.

Mr. Secretary, I believe you feel that the senior civil servant was the one that made this decision, Mr. Skibine, and that was not a political appointee, I believe. Am I correct in that?

Secretary BABBITT. Congressman, I don't think that's correct. The decision letter, and the decision itself, was made by Michael Anderson. But the record shows, I think——

Mr. HORN. We all agree he is a political appointee.

Secretary BABBITT. Clearly.

Mr. HORN. I am bringing up Mr. Skibine, because we did depose him and I think he is a member of the Solicitor's Office now as a

civil servant. I want to refer to exhibit 363. There are eight letters there that testify under oath that Mr. Skibine, when he came to explain the decision, said the following, and he said, "that staff had approved the application, but when it went up to the Secretary's office, politics took over." And you will find that repeated in various things, but basically, that's it. Exhibit 363, 363–1 through 7.

Now, I want to move—I guess I would say is Mr. Skibine right on that, politics did take over?

[Exhibit 363 follows:]

STATEMENT

On December 3, 1996 the Lac Courte Oreille Casino Bingo hall was used for a meeting between Wisconsin Tribal leaders and staff and Mr. George Skabine and his BIA staff people The subject of the Hudson trust application denial came up, and I remember Mr. Skabine's response to the question "why was the application denied at BIA?" - his response was that "we approved it but it was disapproved upstairs". He later stated that he thought the Tribes should begin a new application process.

Frederick R. Roach
LCO Casino
General Manager

Notarized this 17th day of January 1998
Kate D. Griffin

PLAINTIFF
DATE

On December 3. 1996 a meeting was held at the L. C. O. Casino Bingo Room in regards to the Hudson Project. In this meeting I remember that Hudson project was approved by one level but was changed at another level

Sincerely Elsie Burrage Quetta
L. C. O. Casino.

Notarized this 17th day of January 1998 - Kate J Taylor

EXHIBIT
103-L

AFFIDAVIT OF FRED HAVENICK

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Fred Havenick, being first duly sworn on oath, deposes and states as follows:

1. On December 3, 1996 I attended a meeting at the Bingo Hall of the Lac Courte Oreilles Reservation in Hayward, Wisconsin. The meeting was attended by tribal leaders and representatives of the Bureau of Indian Affairs, including George Skibine.

2. In response to a question about what happened with the Hudson Casino Project, I recall George Skibine saying "staff had approved the application but when it went up to the Secretary's office, politics took over."

Fred Havenick

Fred Havenick

Subscribed and Sworn to before me
this 15 day of January, 1998.

Notary Public, State of Wisconsin
My Commission is permanent

GALAXY\PLEADING\SKIBINE.NO

AFFIDAVIT

AFFIDAVIT OF MARY ANN POLAR

I, MARY ANN POLAR., being first duly sworn under oath, hereby states as follows:

1) That I am an adult resident of the State of Wisconsin, and the duly elected Treasurer of the Sokaogon, Chippewa Community located at Rt. 1, Box 625, Crandon, Wisconsin, 54520

2.) That on December 3, 1996, upon request of the Lac Courte Oreilles, I attended a meeting at the LCO Casino in their Tribal Bingo Hall that was conducted by George Skabine from Washington, D.C., who I believe is a head employee with the Bureau or Department of Interior

3) That at said meeting, George Skabine was asked why his department killed the deal at Hudson for the Casino at the dog track for the three tribes involved.\.

5) That George Skabine stated it was not his department's fault Hudson was not approved, as it was approved by both Ashland and the Minneapolis office, however, when it got to Washington, politics took over and killed the deal

Further the Affiant saith not.

Dated this 16 day of Jan 1998

By Mary Ann Polar
Mary Ann Polar Tribal Treasurer

ACKNOWLEDGMENT.

STATE OF WISCONSIN)
) ss
FOREST COUNTY)

Personally came before me this 16th day of January 1998 the above named Mary Ann Polar Tribal Treasurer of the Sokaogon Chippewa Community, to me known to be the person who executed the foregoing instrument and acknowledge the same.

Janet K. Dale

Notary Public, Forest County, Wisconsin
My Commission expires: date 04-11-01

Seal

EXHIBIT

AFFIDAVIT

AFFIDAVIT OF PETER A. LIPTACK

I, PETER A. LIPTACK, being first duly sworn under oath, hereby states as follows:

1.) That I am an adult resident of the State of Wisconsin, residing at 14822 County "F", Lakewood, Wisconsin, 54138, and the Tribal Paralegal of the Sokaogon Chippewa Community, a position that I have held continually since May of 1995.

2.) On December 3, 1996 at the LaCourte Orielle Reservation I attended a meeting with representatives of the Bureau of Indian Affairs, also at the meeting, was George Skabine, Paula Hart, Chairman Ackley, DuWayne Derickson, Sandra Olds, Mary Polar, tribal representatives from L.C.O and the Red Cliff Tribes;

3.) That on said date, a question was asked of George Skabine as to why his department killed the Hudson Application.

4.) That George Skabine responded by saying that we should not be mad at his department, his department did not kill the deal, it was approved by both the Ashland and Minneapolis Offices. The deal was killed in Washington after politics took over.

Further the Affiant saith not.

Dated this 16th day of January, 1998

By Peter A Liptack
Peter A. Liptack

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss
FOREST COUNTY)

Personally came before me this 16th day of January, 1998, the above named Peter A. Liptack to me known to be the person who executed the foregoing instrument and acknowledge the same.

Notary Public, Forest County, Wisconsin
My Commission expires: date 04-22-01

Seal

EXHIBIT 363

On December 3, 1996, there was a meeting of the Lac Courte Oreilles, Red Cliff, and Sokaogon tribal governments with their partner , Mr. Fred Havenick, regarding the Hudson Casino Project. Also in attendance were representatives from the Great Lakes Agency, Minneapolis Area Office, and Washington DC Office of the Bureau of Indian Affairs.

Mr. George Skibine of BIA's Indian Gaming Management was trying to persuade the tribes to re-submit their application. The tribes did not understand why this was necessary when the application was perfectly in order in accordance with IGRA. Mr. Skibine responded by saying something similar to " We approved it but it was changed by politics at the Secretaries level. "

J. W. Cadotte
LCO Tribal Member

Notarized this 19th
day of January 1998.
Kate D Taylor

AFFIDAVIT

AFFIDAVIT OF ARLYN ACKLEY, Sr.

I, ARLYN ACKLEY, SR., being first duly sworn under oath, hereby states as follows:

1.) That I am an adult resident of the State of Wisconsin, and the Chairman of the Sokaogon, Chippewa Community located at Rt. 1, Box 625, Crandon, Wisconsin, 54520-9635.

2.) That on or about November 7, 1996, my Tribe received a written request from the Lac Courte Oreilles Tribal Governing Board to attend a meeting on December 3, 1996 at their reservation; That said request indicated that "George Skabine, the Direcotry of BIA Office of Indian Gaming Management and Nancy Pierskella suggested that they come to Wisconsin to meet only with the Chippewa tribes interested in the Hudson Casino to provide technical assistance to the Mole Lake, Red Cliff and Lac Courte Oreilles (LCO) Bands

3.) That on December 3, 1996, I attended a meeting at the LCO Casino in the Tribal Bingo Parlor, That on said date, in addition to representatives of the above named tribal governments, George Skabine was in attendance and conducted the meeting

4.) That at said meeting, George Skabine was asked why his department killed the deal at Hudson for the three tribes.

5.) Geogre Skabine stated that it was not his department that did not approve Hudson, it was approved by both Ashland and Minneabpolis, however, when it got to Washington, politics took over, politics killed the deal!

Further the Affiant saith not.

Dated this 16th day of January, 1998

By: Arlyn Ackley, Sr., Tribal Chairman

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss
FOREST COUNTY)

Personally came before me this ___ day of January 1998 the above named Arlyn Ackley, Sr., Tribal Chairman of the Sokaogon Chippewa Community, ___ to me known to be the person who executed the foregoing instrument and acknowledge the same.

Notary Public, Forest County, Wisconsin Seal
My Commission expires date 04-21-01

EXHIBIT 363-6

AFFIDAVIT

AFFIDAVIT OF DUWAYNE DERICKSON

I, DUWAYNE DERICKSON., being first duly sworn under oath, hereby states as follows:

1.) That I am an adult resident of the State of Wisconsin, and the Tribal Planner of the Sokaogon, Chippewa Community located at Rt. 1, Box 625, Crandon, Wisconsin, 54520-9635.

2.) That on December 3, 1996, I attended a meeting at the LCO Casino in the Tribal Bingo Parlor; That on said date, in addition to representatives of the above named tribal governments, George Skabine was in attendance and conducted the meeting.

4.) That at said meeting, I asked George Skabine why his department killed the deal at Hudson for the three tribes.

5.) Geogre Skabine stated that it was not his department that did not approve Hudson, it was approved by both Ashland and Minneabpolis, however, when it got to Washington, politics took over and politics killed the deal at Hudson'

Further the Affiant saith not.

Dated this 16 day of January, 1998.

By _____
DuWayne Derickson, Tribal Planner

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss
FOREST COUNTY)

Personally came before me this 16th day of January 1998 the above named DuWayne Derickson - Tribal Planner of the Sokaogon Chippewa Community to me known to be the person who executed the foregoing instrument and acknowledge the same.

_____
Notary Public, Forest County, Wisconsin Seal
My Commission expires date 04-27-01

EXHIBIT 363-7

Secretary BABBITT. Congressman, I watched the exchange in this committee when Mr. Skibine was asked about this, and I must say, I don't think any fair-minded person could doubt the veracity of his answer.

Now, there were affidavits submitted from a number of other participants at that meeting clearly substantiating Mr. Skibine's testimony, and I watched that quite carefully. I just don't think there is any doubt——

Mr. HORN. Thank you. There is no doubt that he said that and they say it word for word.

Let me move to another exhibit, 314, and I am looking primarily at 314–3 and 4. Now, this four-page exhibit is written by Mr. Scott Dacey, who is the lobbyist for the Wisconsin Green Bay Casino of the Oneida tribe and who is working in opposition to turning over to the poorer Wisconsin tribes the Hudson Dog Track Casino.

Now, he described meetings of May 23rd and May 24th. At the end he says, Mike Anderson, who we all agree was the political appointee that made the decision, said to me, "after our meeting," that—this is the bottom of the page, "that they are trying to keep this issue on the merits and they will try to thread the needle, on this request."

Would you agree that this is what they were doing and agree with Mr. Anderson's comment?

[Exhibit 314 follows:]

TO: Debbie Doxtator, Chairwoman
Oneida Business Committee

FROM: Scott Dacey

DATE: May 25, 1995

RE: Meetings of May 23 and 24 in Washington, D.C.

The following is a report concerning the meetings I participated in during your trip to Washington, D.C. on May 22&23.

May 22

BIA: In an effort to better understand the current status of the Hudson track proposal, Debbie, Carl Artman and I met with [redacted] Deputy Assistant Secretary for Indian Affairs, George Skibine, Director of the Office of Indian Gaming Management, and Tom Hartman, a member of Skibine's staff. The Indian Gaming Management Office will send a letter to the Red Cliff Tribal Council this week stating that their office expects to complete the review of the request within one month. The paperwork will then be sent to the Solicitors Office at Interior to make certain the Office of Indian Gaming and the BIA Minneapolis Area Office have complied with all of the requirements outlined under Section 20 of the Indian Gaming Regulatory Act. The Solicitor would then pass the paperwork along to the Secretary's office for the approval or rejection of the petition. The Secretary has the ability to approve the transfer of land into trust under two areas of the law, first Section 20 of IGRA and second, Section 151 of the Code of Federal Regulations which governs land acquisitions by Indian Tribal Governments and individual Indians.

Section 20 of IGRA states that the Secretary must determine that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community. Skibine stated that their office is first attempting to assess whether this transfer would be "detrimental" to the "surrounding community".

Because neither "detrimental" nor "surrounding community" are defined in IGRA, the BIA has written guidelines, "Checklist for Acquisition for Gaming Purposes". "Surrounding community" includes most forms of non-Indian

Oneida Ex 5 KKM Date

EXHIBIT
314-1

government within a 30 mile radius of the lands in question and all Indian governments within a 50 mile radius of the lands in question. (The definition for Indian governments has been enlarged to a 100 mile radius for all future petitions.) The term "detrimental" means activities which might arise other than normal competitive pressures. For example, an argument establishing detriment might include increased auto traffic, a drain on the area water supply, or other environmental concerns. However, even environmental concerns can be offset by parties willing to negotiate new traffic patterns, additional parking lots, new roads, new sewers, etc. Public sentiment or opinion is not considered "detrimental", therefore, little weight is given to communities which pass resolutions in opposition to gaming unless they demonstrate an impact on the community. Moreover, the economic impact a gaming establishment might have on other gaming or non-gaming establishments is also of little concern to the BIA because it falls into the definition of a "normal competitive pressure".

Should BIA find the petition not to be detrimental to the surrounding community, they would then move to consider the impact such action would have on the tribe(s) requesting the transfer.

Mike Anderson clearly does not want to establish a precedent against tribes wishing to bring land into trust in the future. He largely wanted to know what justification the Oneida had in opposing the sovereign actions of another Indian Nation or group of Nations.

Mary Frances Repko, Staff to Sen. Feingold: Debbie and I discussed the Hudson track and the recent conversations Debbie has had with representatives of the Stockbridge Munsee. She stated that Sen. Feingold intended to stay out of this issue. She said that he did not want to take sides against any tribe wishing to engage in gaming.

Senator Feingold is using the accord which Oneida reached with Ashwaebenon to illustrate how Tribal governments and local units of government can work together when bringing land into trust. This illustration is usually sent to constituents who complain about tribes taking land off the tax rolls.

(Note: Debbie and Bill Gollnick met with Senator Feingold on Tuesday evening. I was not present at that meeting.)

May 23

Senator Kohl: Debbie outlined the Oneida's opposition to the Hudson track and explained the Stockbridge proposal. We pressed Senator Kohl to contact Secretary Babbitt to let them know of his interest in the track issue, and he agreed.

Debbie also thanked the Senator for all of his help in securing funds for additional police officers on the Reservation. Funds were provided under the crime legislation passed last year and the Oneida were successful grant applicants.

Congressman Roth: Debbie outlined the Oneida's opposition to the Hudson track and explained the Stockbridge proposal. We thanked him for his letter to Secretary Babbitt in opposition to the Hudson Track. We also offered to get him any information he might need relative to the activity of the Stockbridge proposal. He had no immediate reaction to the proposal.

Analysis

With respect to the Hudson track, things don't look good. BIA staff is interested in protecting the rights of tribes who might one day wish to take off reservation lands into trust for gaming purposes. Mike Anderson asks what criteria should be established to prohibit a tribe from moving off reservation land into trust for gaming purposes. An answer which does not threaten sovereignty is difficult to find.

Reaching the "detrimental" standard is difficult, too. According to Tom Hartman, all of the economic impact statements are of no value in this assessment. The addition of a new Indian gaming establishment to a market area brings "normal competitive pressures". The BIA has difficulty saying "no" to one tribe in favor of another, especially when the statute gives them no direction. BIA feels this decision is proper, and in the long run, will work to assist tribes when they are challenged by non-Indian groups with economic arguments alone.

In the case of the Hudson track, or for that matter the Kaukauna track, many of the environmental issues were addressed when the sites were originally established. Although one could argue that casino style gaming will bring more cars, busses, and people, it is likely that accommodations can be made to bring the facilities into line with current laws.

Finally, The political opposition from St. Croix County, the City of Hudson, Obey, Roth, and Gunderson may not be worth very much under the BIA definition of "detrimental." None of these letters say much other than to voice a general objection to the spread of gaming. BIA, in their willingness to uphold the interests of the greater number of tribes, has decided not to give such statements very much weight.

D Mike Anderson said to me after our meeting that they are trying to keep this issue on the merits and they will "try to thread the needle" on this request.

Things might change when the politicians like Babbitt and Duffy become involved, but without the law on their side it will be difficult to kill the deal.

Should Babbitt come out against Hudson, he will likely find his excuse in Section 151 of the CFR. I would strongly suggest we look into this area of the law to help Babbitt reach his conclusion.

As we know, Governor Thompson remains the key to stopping this effort.

Please let me know if you have any questions.

cc: Carl Artman

Secretary BABBITT. Congressman, I have not had a chance——

Mr. HORN. Bottom of the page, bottom of page 3, "Mike Anderson said to me," this is again Dacey, the lobbyist for the Wisconsin tribe that didn't want any competition either, just like the Minnesota tribes.

Well, I can't waste my time, and I guess I will withdraw the question of you. But here we have Anderson saying that, and if we turn to page 4, Dacey, based on his conversation with Anderson says to his client, which is Debbie Doxtator, chairwoman of the Oneida Business Committee, he says, things might change when the politicians like Babbitt and Duffy become involved, but without the law on their side, it will be difficult to kill the deal.

In other words, Anderson sort of implied that the law was on their side: "Should Babbitt come out against Hudson, he will likely find his excuse in Section 151 of the Code of Federal Regulations. I would strongly suggest we look into this area of the law to help Babbitt reach his decision."

Now, are you aware of any contacts by Mr. Dacey or representatives of the Oneida tribe on this subject?

Secretary BABBITT. No, I am not, and looking at this, it looks to me like another one of these sunrise deals, a lobbyist makes a statement saying it is going to be impossible to make the sun rise, but when it does, I will have done it.

Mr. HORN. OK. Let's then move down the line here to the memo from one of Harold Ickes' staffers to another of Harold Ickes' staffers. It has been referred to a few times. It is 317 is the memo, and if you would just take a look at that, some would say it is a status report. Others would say, obviously, there had to be a lot of talking somewhere to get that status report. And I just wondered what you think of that.

Secretary BABBITT. Heather Sibbison, who you did not invite to testify, in her deposition, I believe the deposition was given to the Thompson committee, discussed this in some detail, I think, quite convincingly, and rather than attempt to recapitulate her discussion of this, I would simply say, I read her statements in the record and I think they are very persuasive.

Mr. HORN. I worked in my past incarnation as an assistant to a Cabinet Secretary, and I am curious whether your people talked to you or you talked to your people, because I listened in and sat in on some of these various depositions, and they all had sort of "I can't recollect disease," which is very widespread in this town due to the water or something, and I am just curious. Did they ever stick their heads in and say, chief, we got a hot one coming up here? What are we going to do about it?

Secretary BABBITT. Well, Congressman, I preside over a Department with 65,000 employees.

Mr. HORN. Well, you are saying—did they or didn't they come into your office is what I am after.

Secretary BABBITT. There is nothing unusual about these specific adjudicatory matters being handled entirely outside of my purview. That has been the case with these.

Now, I am certain that——

Mr. HORN. Here is what they said.

Secretary BABBITT. On a casual basis—I would like to finish, if I may.

Mr. HORN. OK. I know we filibuster on some of these, knowing we have limited time, but let me just read so we make sure you are responding to this. Is a by-product—what they say in this memo as Harold Ickes' staffers who checked, obviously, with your Department and your office is a by-product of the wealthier tribes lobbying against the application, and then the fact is, this important, this memo is, which was drafted nearly 6 weeks before the rejection of the application, also said they will probably decline without offering much of an explanation. That was referring to what the decision would be in the Department. So this wasn't news to the White House that they got it from somewhere, and I would think usually they pick up the phone and call the Secretary or the Secretary's top assistant. But we can't get anybody to keep telling us——

Secretary BABBITT. Oh, come on, come on, no way, no way. The avalanche of stuff that comes into the White House where people need information to respond and otherwise, is always handled at a routine level. People don't call me up from the White House or anywhere else—I mean come on. There are—I have things to do during the day, with all due respect, and it ain't this.

Mr. HORN. Heather Sibbison is assistant to Duffy. Duffy is your counselor. The way staff responds to these is, they say, what's the boss think about this? And either they stick their head in or you let them know where you are.

Secretary BABBITT. Congressman, I—that just isn't the way you run an agency of 65,000 employees on a matter like this. I would have a line a half mile long outside my office all day long.

Mr. HORN. When it's a White House——

Secretary BABBITT. Yes, of course.

Mr. HORN. When it's a White House call, I think usually the Secretary's informed.

Secretary BABBITT. You got to be kidding. You got to be kidding.

Mr. HORN. Really?

Mr. SUNUNU. Mr. Horn, would you yield just for a moment?

Mr. HORN. No, I won't yield. I want to finish up here, and you will have time.

Let me move into another area here.

Turning to the very important question of opposition from the community, you have testified this was very important, and you have also been very public with your statements that your Department will not force off-reservation casinos on unwilling communities, and we know about the Wisconsin bipartisan political opposition. But I guess I am curious, you have emphasized the importance of the opposition, and did that really make the difference in this decision, this community opposition? Did that make the difference, or were there other factors?

Secretary BABBITT. The decision itself signed by Michael Anderson, it seems to me, is a pretty good starting point for this.

Mr. HORN. OK. Now, let me ask you, if that's a good starting point, if more citizens supported the Hudson Casino than opposed it, would it be a significant factor?

Secretary BABBITT. Well, let me give you my view of this opposition issue, and suggest that there are—you know, there are differing shades of—these are all relatively new issues, and there is not a lot of settled case law. You want my opinion? I think the important thing in assessing local opposition is not to count names on petitions, although there certainly is some evidence.

Mr. HORN. Well, it's my time——

Secretary BABBITT. May I finish? I would like to finish, if I may.

Mr. HORN. I want to get this point in before——

Secretary BABBITT. Mr. Chairman, I would like to finish my answer.

Mr. HORN. You can answer on another 5 minutes.

Mr. BURTON. The gentleman from California has the time. I think he just wants to finish with one more question.

Mr. WISE. Mr. Chairman, our side has no objection to letting the time be extended so that a witness can properly answer a question.

Mr. BURTON. And we will grant the witness the time to answer. I have not declined one time letting him answer. He will be able to answer the question fully.

Mr. Horn.

Mr. HORN. I have in my mind a petition signed by over 1,000 people which wasn't found in the record until fairly recently, which isn't in the, what was provided the court by Interior in their 14-volume record, quote, "of all the significant decisionmaking material for this matter," and I just wonder how this petition, which supports the casino, doesn't happen to be in the record that is filed with the Federal court? And that bothers me, and that is why I was curious how much we care about people that were supportive of the casino.

So I just wonder if you are aware of this with 1,412 signatures. This is the petition. We found, as mentioned by the chairman, boxes mysteriously come up here after people have been deposed.

Secretary BABBITT. I take exception to that. I really do. We have made an enormous and extensive effort to respond and I think that any—I just think that is an unwarranted characterization. I really do.

Mr. BURTON. The gentleman's time has expired.

Mr. Babbitt, Secretary Babbitt, you have the opportunity to answer the question.

Secretary BABBITT. Mr. Chairman, thank you.

Mr. BURTON. I hope you will address the one issue he raised there at the end about the signatures on the petition not being included in your record.

Secretary BABBITT. Well, Mr. Chairman, I would have to respond to that in writing, obviously. I don't have any independent facts, but I would be happy to do that.

Mr. BURTON. Why would you have to respond to that in writing? You have counsel with you and you have staff people who have that information. It is well-documented.

Secretary BABBITT. Because I have no idea what the document is, where it came from, who sent it, where it was found.

Mr. BURTON. I don't want to belabor this point, but there were over 1,400 who signed this petition, and it was not included in the record. It was extremely important, because we are talking about

opposing views on this. It is a significant part of the discussion. So would you please try to refer to it and answer that question?

Mr. BARRETT. Mr. Chairman, parliamentary inquiry.

Mr. BURTON. I would be happy to answer your parliamentary inquiry.

Mr. BARRETT. Do we have copies to use that as an exhibit?

Mr. BURTON. I think we passed that out yesterday, but if not, we will get that for you right now, a copy of the petition for every Member.

Secretary BABBITT. There is nothing on the face of the document that indicates that it ever came to the Interior Department. Maybe it did, maybe it didn't. I would be happy to respond, but I can't tell you anything from just looking at the document.

Mr. BURTON. But the petition was not included in the record. We will check and see if it was forwarded to the Department. If it wasn't, we would like to have an answer in writing as to why it was not included in the record.

Secretary BABBITT. I would be happy to do that.

Mr. BURTON. Do you want to answer the rest of the question, Mr. Secretary?

Secretary BABBITT. Yes. The issue of how you judge community opposition, I think, is an important issue, and here is my view. I believe that the only realistic way to do this is to refer to local elected officials. I don't think the law contemplates that we should carry out a poll or, you know, do this by saying, well, petitions against have 10 more signatures than petitions for. I think the clear intent of this statute is that we should give great deference to the views of the local governments and the local officials that are chosen in communities to deal with these kinds of issues.

Now, in this case, there were three of those communities. One was Hudson where the site was located. The city council, in my judgment, is the place to look for community opinion. They passed a resolution in opposition. The second place to look is the town of Troy. Troy is adjacent. It surrounds the track on three sides. We looked to the town council of Troy. They were unanimously opposed. The third community within the checklist used by the Bureau of Indian Affairs was the St. Croix tribe. They, too, had registered their official opposition.

Now, that, to me, is the proper and appropriate approach. Now, there are many others. The Wisconsin Attorney General, Congressmen, legislators, their views are all entitled to weight, as are the signers of petitions. But in my judgment, the local governments are the place to begin this analysis, and they were all against it.

Mr. HORN. My time is up. I will continue it when time comes again.

Mr. BURTON. Mr. Kanjorski, you are recognized for 10 minutes.

Mr. KANJORSKI. Thank you very much, Mr. Chairman. Mr. Chairman, we are going to pass over seniority here to Mr. Barrett who has been so conscientious and studious and who is from Wisconsin so he can have the first 5 minutes.

Mr. BARRETT. Thank you.

First of all, thank you for being here. I think you made the correct decision. I think you made the decision for the correct reasons. I think it is important to look at local opposition, and this was an

issue for me, because there are 400 dog tracks in the State of Wisconsin, and I foresaw the scenario of each of those dog tracks in becoming a target for gaming, and that is something that the people of the State of Wisconsin did not want.

Whether it was Indian gaming or not Indian gaming, there was a constitutional amendment that addressed this issue specifically. There were balanced questions within the State that addressed this issue specifically, so I think you did make the right decision.

Let me ask you a question, though, about your meeting with Mr. Eckstein. You have sat before this committee, you referred to it as quality time with us, and we appreciate having you here. You had the opportunity for quality time in the Senate as well. Let's say that you had granted Mr. Eckstein's request. Where do you think you would be sitting right now?

Secretary BABBITT. Well, I would be sitting here—look, if I had granted his request, the allegation would have been that having stayed out of the process for the entire course of this, all of a sudden, a lobbyist, a lawyer lobbyist hired by a casino company trying to change the result by invoking a personal friendship succeeds, and I wasn't prepared to do that, and——

Mr. BARRETT. And I think you would be sitting here today, sort of maybe in retrospect you could have marked this day off that this is the day you would be sitting before this committee regardless of what decision you made.

This is the book with the documents. This is the smoking guns. This is the time sheets, the depositions, the memos. Did you make this decision based on political considerations, or was this decision made——

Secretary BABBITT. Congressman, the answer—now, let me just say that I think a fair-minded person looking at the record of this would say, you know, the folks at the Department of the Interior really did an outstanding job of managing this issue and in making the decision. The process really works. There were all kinds of people floating around on both sides. I mean, this rich tribe-poor tribe, basically the Florida gaming guys are as big and determined and scuzzy as the guys on the other side, and they were all swarming all over this process, and the fact is that our people at the Interior Department kept a quiet zone free of all of this in which the decision was made.

Mr. BARRETT. I would like to ask you another question, Mr. Secretary, and this is a question that deals with the practices within the Department and deals with our action as Congress. As you indicated, your predecessor, Mr. Lujan, had been back to lobby your Department. We know that Mr. Collier and Mr. Duffy have done so.

When I heard that, I thought, this is not right. I was told that that provision was put in the law to allow Indians to have access, or tribes to have access to people with expertise. The issue was raised or objected to that representation by three Indian tribes. Do you think it is time for us to revisit that issue?

Secretary BABBITT. The answer is, yes. I think it could be revisited. I don't think that revisiting necessarily yields an automatic predetermined answer, for this reason: There are a fair number of Indian tribes who now have the resources to hire counsel and that

certainly includes most of the gaming tribes, and this provision surely is not necessary in that context.

The other 95 percent of the Indian tribes in this country are just nearly as poor as they were in 1975, and there are places, small tribes, which will have a tough time paying lawyers and getting counsel to get off the learning curve. There are a lot of places where Indian law is an arcane specialty. And I think some of the conditions which prompted this law still apply, but clearly there are a number of areas where it doesn't.

Mr. BARRETT. I would like to work with you and with the chairman of the committee to do that. I think my time has expired. I yield back to Mr. Kanjorski. Again, thank you, Mr. Secretary.

Mr. KANJORSKI. I recognize Mr. Wise.

Mr. WISE. Mr. Secretary, I want to continue where we left off and that was about the local opposition and particularly that of elected officials who represent their constituencies. The majority leader—I have seen a letter, I don't know whether you have, where the majority leader of the Wisconsin State Senate had written a letter in opposition to this project moving forward.

I mentioned at the time that the then-elected representatives in the House delegation included Representative Toby Roth and Representative Steve Gunderson, who represented the district where it would have been located, both stating their opposition, and I believe other members of the delegation, Democrats did as well. There is a letter that I have seen where State Representative Sheila Harsdorf, herself a Republican, had gotten a petition signed by 29 other elected State legislators, Senate and House Members, Republican and Democrat, opposing this. The fact of the matter is that there was extensive opposition by the elected leadership of the State of Wisconsin; is that not true?

Secretary BABBITT. That is absolutely clear.

Mr. WISE. In fact, I am kind of struck. The Governor of Wisconsin is Republican, the majority leader is Republican, the House Members at the time who opposed it were Republican, State Representative Harsdorf is Republican. I kind of wonder—you might be here as a tool for the Republican party by the way that you ruled. Maybe that is what this investigation ought to be about.

Let me ask you this, as well. You have stated that you had no contact with Mr. Ickes on this matter; is that correct?

Secretary BABBITT. That is correct.

Mr. WISE. And Mr. Ickes, as I understand it, in a deposition in the Senate has stated that he had no contact with you. My question to you is, would you be just as happy to have Mr. Ickes testify here today?

Secretary BABBITT. Sure.

Mr. WISE. And would you feel perfectly confident in having him testify in front of this committee?

Secretary BABBITT. Sure.

Mr. WISE. To confirm what you have said?

Secretary BABBITT. Absolutely.

Mr. WISE. I guess my question is why is he not here today and why hasn't he been called to testify before this committee, and I think the reason is that he will confirm what he has said in the Senate, that there is a problem—in this investigation that the ma-

jority has taken forth, there is a big gap right here and they can't establish that there has been any contact, because there hadn't been.

Now, I want to also echo something Mr. Barrett brought up, because I am struck by this. Element No. 1 is, there is intense local opposition certainly stated. As you go through all the exhibits by elected officials in the State of Wisconsin, including the State representatives and Senators and House Members to the Federal delegation, the majority leader of the State Senate and so on, intense local opposition to this project, No. 1. No. 2 is your friend and former associate, Mr. Eckstein, when he came in, came in representing the opposite point of view from what you ruled, didn't he?

Secretary BABBITT. That is correct.

Mr. WISE. He was the only—is it your testimony that he was the only advocate on either side that got in your door?

Secretary BABBITT. That is correct.

Mr. WISE. And your agency, or your Department then ended up ruling counter to what he wanted; is that correct?

Secretary BABBITT. Well, I don't—I have yet—I don't think there is a single member of this committee that I have heard during this entire course of hearings say that they disagreed with the Department's decision. I have not heard one member of this committee say that.

Mr. WISE. And so I guess—and then finally, you have said that there was no contact with Mr. Ickes in the White House; Mr. Ickes has said in deposition that there was no contact with you. I am struck, what are we doing here? And had you ruled the opposite way in the face of intense opposition from the State house on down in Wisconsin, basically Republican, much of it Republican dominated, had you ruled the opposite way when your friend and former associate, the only advocate to get in wanted you to rule the opposite way, we would be here today, as Mr. Barrett said, conducting the same hearing, but it would be reversed. It would be, why did you give it in to Mr. Eckstein? Why did you ignore the overwhelming local opposition in Wisconsin? I just, I am struck by this, that we are here, Mr. Babbitt, and I regret that we are here under these circumstances and that you are here. But I think it is good that we have had this hearing and we can get this out, because I think it is an important matter.

Finally, as I close, Secretary Babbitt, you have not testified on this, and I am not asking you to comment. I will say this: apparently there was money that was contributed to the Democratic committee from—on both sides of this. I suspect there has been significant money contributed to both parties, Republican and Democrat, by the gaming advocates from all over the country, and this is another compelling reason, wherever you fall out, that this Congress ought to be voting this year on campaign finance reform and eliminating soft money.

Mr. Chairman, I would just like to suggest, as the President suggested in his State of the Union message the other night, that the best thing that we could do is to have the Republican and Democratic leaderships to bring a bill up on the floor of the House this year and we can eliminate this kind of situation ever having to come before this committee again. Thank you.

Mr. BURTON. Mr. Souder, you are recognized for 10 minutes.

Mr. SOUDER. I wanted to clear up something before I started my questioning, because several times you have referred to conspiracy, as have Members on the minority side. Do you think I am part of a conspiracy?

Secretary BABBITT. Congressman, I have never met you before; I have never spoken with you. You don't look conspiratorial to me.

Mr. SOUDER. I want to confess that I do have a staff member that went to Pepperdine Law School. I am hoping to make one of the charts somewhere along the line.

Do you think Janet Reno was part of a conspiracy when she wanted to have a preliminary inquiry into this?

Secretary BABBITT. No.

Mr. SOUDER. I think that you are concerned when aspersions are cast even directly on yourself, and I would appreciate the same concern for us. We have a duty here on this committee, because as the Democratic Members have pointed out on the tobacco question, as they have pointed out on general campaign finance, there is a deep concern in this country that when people put lots of money into one party and when they hire people who were at the Democratic National Treasury meeting with the Democratic national chairman, meet with people from the President's Re-elect Committee, when they see memos going out that in fact, influence may have been there, I hope, I honestly hope that you and everybody in the Department are completely innocent and we will never learn that there have been mistruths told. But our obligation as elected officials is to pursue this even if sometimes it comes to badgering or seeming to badger, seeming to ask these questions numerous times, because that is our obligation as elected officials. I hope you appreciate that.

I wanted to followup with the question as to whether applicant tribes are fully informed if their application is flawed. Do you consider an application process to be flawed if, indeed, the tribes aren't fully consulted in a meaningful way?

Secretary BABBITT. I think the law requires a consultation, yes.

Mr. SOUDER. And you said several times that you met with tribal members or their representatives. Did you ever say yourself that the Department of Interior has identified a potentially fatal flaw in their application and you need to do X or Y to correct it?

Secretary BABBITT. Well, I think that if you look at the transcript of my remarks at the Listening Conference, there is some pretty clear notice in that. It was not directed to the specifics of this, but it was a discussion of the issue, and I said very clearly to every, every participant who came to that in the State of Wisconsin that I—that our policy was not to do these cram-downs, and that absent support from the local community, we were not in the business of doing that.

Now, the difficulty here is this: the difficulty is the gambling company, because don't you see, they were anchored in a community that didn't want them, and I mean what could be done about it?

Normally what would be done about it is that the tribes would do a little forum shopping and look around, and there probably are communities that would be happy to have this, but the tribes didn't

have that choice because these guys were anchored in a community that didn't want them, the opposition was hardening. I mean, what was there to be worked out?

Mr. SOUDER. We certainly had testimony that, in fact, the community was divided early; it certainly seemed to have consensus late. The only unanimous opposition really was the Minnesota Indian tribes. But I want to get back to my line of questioning.

To your knowledge, did anyone in the Department specifically say you need to do this to get your application changed? In other words, you need to prove this from the town of Hudson, or was part of this that they had to win the approval of the Minnesota tribes, which was impossible?

Secretary BABBITT. I was not part of the give and take of this process, so the answer to your question is, I don't have any recollection of that, and I shouldn't have, because I was not part of the process.

Now, if you look at the record that this committee has compiled over the last 2 weeks, I think there is solid evidence of interaction with these tribes with the applicants and that they had adequate notice.

Mr. SUNUNU. Would you yield for a moment, Mr. Souder?

Mr. SOUDER. OK. Go ahead.

Mr. SUNUNU. I would only draw your attention, Mr. Secretary, to the record, to the testimony of Mr. Skibine in response to the question: Was there communication from your office about specific problems with their application? Mr. Skibine, a dedicated career civil servant, responded in writing: I don't think there were.

Mr. SOUDER. And I would like to, claiming back my time, have exhibit 353–2 put up on the screen, and I would like to read that, and also from exhibit 335.

Mr. Skibine was explaining that the July 14 rejection letter constituted a form of notice of the alleged deficiencies in the Hudson application; he was representing that the rejection letter was a form of consultation.

In one of our exhibits, committee counsel asked him, "Question: But prior to the rejection of the application, that is an easy way to do on it, to tell the people in advance what the problems are and let them cure it? Answer: Yes, we could have done that. That is not the way I did the first application. That is not the way we did it at this point."

Earlier in the deposition he was asked, "Question: . . . Here were three poor Indian tribes that had presented applications to the Department of the Interior, and you were making a determination as to whether to approve the application or deny the application. If you as director of the IGMS staff, identified a particular problem that might lead to the rejection of an application, did you consider it important to communicate that directly to the applicant tribes to give them an opportunity to cure the problem? Answer: Good question. I don't think that I did that on this application, the first application I considered as head of the gaming office. If I were to do it again different now, you know, it might be different. It might be something I would consider doing, but at the time I didn't do it."

Now, were you aware that——

Mr. LESHY. Congressman, what you were just reading from is not 352–3.

Mr. SOUDER. 352, the first one; the second one is 351.

Mr. LESHY. 351.

Mr. SOUDER. Do you have any comment on that? Because I think the record shows that Mr. Skibine was saying that there were many things, but in this particular case, while there was early consultation, he did not once in Washington have direct contact on the specifics with the Wisconsin tribe.

Mr. LESHY. I am sorry. These are not marked. Are they both Mr. Skibine's deposition?

Mr. SOUDER. Yes. No, his testimony. The second one was—yes, they are both depositions, excuse me.

Mr. LESHY. All right.

Mr. SOUDER. I have one other point while you are looking at that, and this is exhibit 335. This is an analysis of the Hudson case by the Department of Justice lawyer David Jones. He states, We are primarily concerned about our ability to show that the plaintiffs were told about and given an opportunity to remedy the problems which the Department ultimately found were outcome determinative. Area directors are told to give applicants an opportunity to cure problems. It would be hard to argue persuasively that applicants lose this opportunity once the central office begins its review. The administrative record, as far as we can tell, contains no record of Department meetings or communications with the applicant tribes in which the Department's concerns were addressed to plaintiff.

In other words, when they were talking to the tribes at the local level, the application was moving, but once it moved to Washington where it does appear fairly unanimity, they stopped talking to the affected tribes.

That is the deposition testimony of Mr. Skibine, it is the concern of the Department of Justice. Have you seen this analysis before and what is your comment on it?

[Exhibit 335 follows:]

United States Attorney's Office
Western District of Wisconsin

Attorney/Client Communication

February 14, 1996

Privileged

MEMORANDUM FOR SCOTT KEEP, OFFICE OF THE SOLICITOR

From: David E. Jones, AUSA

Subject: Analysis of Litigation Risks in Sokaogon, et al. v. Babbitt, et al.

This responds to your request that litigation counsel provide a brief analysis of the litigation risks in Sokaogon, et al. v. Babbitt, et al., No. 95-C-659-C.

1. **Substantial Potential for Burdensome Extra-Record Discovery.**

In our February 2 hearing on the discovery motions, Judge Crabb's questioning indicated strongly that she would deny our request to limit discovery to the administrative record. She stated outright that "if this were a non-APA case, plaintiffs would easily have demonstrated a reasonable basis for the discovery they seek here" and she asked "What's a plaintiff to do when there is some evidence that outside influences may have affected an agency's decision." She also appeared to believe that the White House, through Harold Ickes's office, exerted influence over the Department, an allegation that plaintiffs pressed by observing that Secretary Babbitt did not provide an affidavit denying his alleged statement that Ickes had ordered the Department to deny the application on July 14, 1995.

A decision allowing extra-record discovery is therefore highly probable, and such a decision would create a difficult precedent affecting not only the Department but also every controversial agency decision. We can expect that the following individuals will be deposed: John Duffy, George Skibine, Michael Anderson, Heather Sibbison, Donald Fowler of the DNC, and perhaps Harold Ickes and Secretary Babbitt. (Note: Ickes has not been noticed by plaintiffs to date and Babbitt's initial notice of deposition has been withdrawn by plaintiffs.) We can also expect burdensome document requests and interrogatories, such as requests for a list of all persons who contacted the Department during the review of the plaintiff tribes' application.

2. **Section 465 Defense Will Not Prevent Remand.**

We do not believe that a defense based on 25 U.S.C. § 465 will prevent the Court from ordering a remand to remedy alleged defects in the § 2719 process. At most, a § 465 defense precludes the Court from ordering the Department to take the land into trust. But this defense will not constrain the Court from ordering a remand if it finds that the Department did not satisfy the consultation requirements imposed by § 2719, particularly given the factual circumstances of this case.

① We understand the Department's view that it first reviews an application under § 465 before engaging in the § 2719 analysis, but the record in this case shows that the sequence was reversed: the Department received the Area Office's § 2719 recommendation, and began its review of same, in November 1994, while the

EXHIBIT
335-1

Department did not receive the § 465 package from the Area Office until April 1995. Opposing counsel have pointed out this timing, and the Department's final decision letter of July 1995 can also be read as indicating that the § 2719 process occurred before the Department broadened its range of considerations under § 465.

The consequence of our factual posture is that the Court could reasonably remand this case with an order that the Department reconsider, as a threshold matter, its § 2719 analysis. Such an order would inhibit the Department's ability to dispose of future applications on § 465 grounds without reaching the § 2719 factors, as future litigants could point to a precedent establishing specific, threshold consultation requirements in these types of decisions.

(2) 3. **Alleged Defects in the § 2719 Process Are Problematic.**

Now that we have reviewed the administrative record in greater depth, we have determined that the alleged problems with the § 2719 process are significant. We are primarily concerned about our ability to show that plaintiffs were told about and given an opportunity to remedy the problems which the Department ultimately found were outcome-determinative. Area Directors are told to give applicants an opportunity to cure problems, and it will be hard to argue persuasively that applicants lose this opportunity once the Central Office begins its review. The administrative record, as far as we can tell, contains no record of Department meetings or communications with the applicant tribes in which the Department's concerns were expressed to plaintiffs. These communications may have occurred, but they simply are not documented in the record. The second, and related, problem is that the Department (3) appears to have changed in this case its past policy of requiring "hard" evidence of detriment to the community. The plaintiffs will therefore argue that they had no notice, either through past policy or through direct Departmental communication, that the "soft" concerns expressed by local officials would jeopardize their application. (4) Finally, the record shows that there was no consultation with the State, in contravention of § 2719.

In sum, the Court could take these problems and reasonably conclude that the Department should reconsider the application and provide the plaintiffs with "meaningful" consultation. The risk, of course, is that the Court could also specify what it means by "consultation," throwing further impediments in the Department's future review of these types of applications. These risks would be avoided through a voluntary reconsideration, which plaintiffs could obtain anyway with a new application.

4. **Settlement Preserves Department's Flexibility in Defining Scope of § 465.**

Finally, we understand that the Department is examining how it should exercise its § 465 discretion in light of the Eighth Circuit's recent decision. To have a chance of winning this case, litigation counsel will need to argue aggressively that the Department has extremely broad discretion, both substantively and procedurally, when it considers an application under § 465. This litigation position may not, as we explained above, be dispositive of all the issues before the Court. At the same time, this position may be inconsistent with wider Departmental goals. It may therefore

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increase the Department's policy flexibility if this case were eliminated as an influence.

As you know, we need to move quickly on this opportunity for settlement before the Court reaches a decision on the discovery motions. Please advise us if you need any additional information.

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Secretary BABBITT. Well, I have not seen the analysis before, and I guess, you know, I am reluctant to characterize a record that's just being sort of thrown up at me. The answer—I am not prepared to, you know, characterize the record.

I would say two things. There was obviously a fair amount, as I read the record, of verbal communication going back and forth. That was very important to an assessment of this. Second, I can tell you that having read the transcript of my Listening Conference remarks, I would say there was some pretty good notice right there.

Mr. SOUDER. The specific thing, as I understand it, is to try to work, particularly with tribes that aren't in the major metropolitan areas. In that area, having lived up there, there is only one big city, Duluth, which already has one big casino in downtown. There are not a lot of options for the poorer tribes and they need some flexibility, and partly I would think that—well, I didn't favor the Indian gaming laws and believe this stuff is being stretched, which is why I said I believe you made the right decision, even though it was kind of on new grounds. The debate on how you made the decision is important, because this type of question comes up if you cite one clause and it doesn't if you cite another, and that is partly why there was this internal debate as to how the Department was going to handle this. Because the appearance, and that is what we have been trying to establish here, is what it looks like—is that on the particular grounds of mileage and the Arthur Andersen study that this would have gone forth—but the political opposition, the dog track referendum the first time actually was supported by the community of Hudson. It was a different tribe, admittedly; it wasn't this particular casino that a tribe was supporting.

Then there was a change in mayor, change in the community; the local Hudson community changed. What was constant was the Minnesota tribes. They realized they were in trouble after the local decision and started pouring money into the Democratic party nationally.

Admittedly, this is an appearance. We haven't established this. Even going up to the President and indirectly to the Vice President of the United States, and suddenly there is a change even in the rationale, and that is what we are trying to get to the bottom of, and it is important if they were consulted after the application got to Washington.

Secretary BABBITT. Well, obviously the record speaks for itself on this.

Mr. SUNUNU. Point of inquiry, Mr. Chairman.

Mr. BURTON. The gentleman will state his point of inquiry.

Mr. SUNUNU. It sounds as if the record of this listening session, which the Secretary is suggesting was an opportunity for the tribes to cure defects in their application, is very important. Do we have the transcript from that listening session as part of the documentation or part of the exhibit record here?

Mr. BURTON. Let me check with staff. Is it the deposition or the listening record that he is talking about? The deposition is here, but he is talking about the listening record that was made at these meetings with Indian tribes. I presume that is what he is talking about.

Mr. LESHY. Yes. I believe we supplied that transcript to the committee a few weeks ago. It is a very thick document, April 8, 1995.

Mr. BURTON. April 8, 1995. Would the staff get that for Mr. Sununu and anybody else that would like to have it.

Mr. SUNUNU. Given that it is such a thick document, it would certainly be helpful if the Secretary or counsel could identify specific examples in that record that were attempts to identify defects in the application. Thank you.

Mr. SOUDER. I yield back, Mr. Chairman.

Mr. BURTON. Mr. Kanjorski.

Mr. KANJORSKI. Mr. Chairman, just for the record, I listened to Mr. Souder's opening remarks where he took umbrage with the Secretary. There is a requirement, an obligation on the part of the Congress and the majority to pursue this, and I agree. But then I reiterate the question Mr. Waxman has made: Why isn't there an obligation to pursue the question of $50 billion, $50 billion in special tax breaks to the largest contributor to the Republican party, the tobacco industry, and that was lobbied and put together by the Speaker of the House of Representatives, the majority leader of the Senate, in the 11th hour, in the dark of the evening when no one knew about it, and by the lobbyists' efforts of the former chairman of the Republican party, Haley Barbour? Why aren't we investigating that? I think we have an obligation to pursue that, too.

Now, Mr. Chairman, I would like to have Mr. Wise for 1 minute.

Mr. WISE. Thank you.

I would just point out, Mr. Secretary, you may not have had time to examine this petition of support that we have all just received ostensibly with 1,400 names or something on it. I find it interesting that, we, the undersigned, as residents of the greater Hudson, WI, area, do hereby affirm our support.

It goes on to say—then you turn to the second page and the requirement before you sign, you must be a qualified, registered voter living within the greater area of Hudson, WI, or you must have lived within the greater area of Hudson, WI, for the last 10 days.

I just turn to the first page and note with interest, I have to go pretty far down before I find one person from Wisconsin. Most are from Minnesota, a fine State, and I know right across the line, but most are from Minnesota, many from St. Paul.

So I question whether this is an outpouring of local support from the citizens of Wisconsin. I just note that for the record. Thank you.

Mr. SANDERS. Would the gentleman yield, briefly?

Mr. WISE. Yes.

Mr. SANDERS. In terms of the petition that you were looking at that we have in front of us, wasn't that alleged that that petition was not in fact part of the record that was considered by the Secretary's office?

Mr. WISE. That is my understanding of the allegation.

Mr. SANDERS. In fact, unless I am missing something right here, it is absolutely part of the record.

Mr. LESHY. I am informed by my staff that this was part of the 14 volume administrative record, so I believe the Congressman was in error.

Mr. SANDERS. So in other words, the suggestion that it wasn't part of the record is not correct?

Mr. LESHY. That is correct.

Mr. KANJORSKI. On that point, Mr. Chairman, you mean a member of this committee represented that this petition wasn't a part of the record and now we find that it was part of the administrative record?

Mr. BURTON. You are referring now to the petition that had signatures?

Mr. KANJORSKI. The 1,400 names that were denied supposedly from the administrative record. Mr. Horn suggested in his direct examination that it wasn't part of the administrative record and now we hear in fact it was.

Mr. BURTON. I don't think he said the administrative record; I think he was talking about the—it hadn't been submitted as part of the record to the Federal court.

Mr. KANJORSKI. Well, the Federal court case, the Secretary is not involved in that. He only is involved in having prepared the record, the administrative record of the application pending before the Secretary of the Interior, not in the defense.

Mr. LESHY. Mr. Chairman, it actually was part of the administrative record filed in the Federal court. The copy that I was given here does not have the so-called Bates Stamp number on it. I am told that the Bates Stamp number on the administrative record, you can find it in the administrative record; it starts at 2404. So it was part of the administrative record filed with the Federal court. It was also given to this committee.

I should also say that there are other petitions in there bearing the signatures of twice as many people as this one going in the opposite way.

Mr. BURTON. Let me get some clarification on this. We will not take it out of your time. Excuse me just a moment.

We will check on this, but it is the understanding of our counsel that in the 14 volumes that were submitted to the court, it was not in there. If that is incorrect, we will set the record straight. We will check on that.

Mr. Kanjorski is recognized.

Mr. KANJORSKI. We will recognize Mrs. Maloney for 5 minutes.

Mrs. MALONEY. Thank you.

Mr. Secretary, the last time I saw you in New York we were touring a historic monument, Grant's Tomb, and there were scores of press following you around, because the next day they were going to announce who the Democratic nominee was going to be for the Supreme Court and many people thought that that nominee was going to be you. Do you remember, Mr. Secretary?

Secretary BABBITT. Yes, I do. That seems like a long time ago, and I don't think that that is ever coming my way again.

Mrs. MALONEY. Well, I must say that after sitting here for 4 days, and in reviewing all of the documents and looking at all the memorandum, it appears that you are truly in a no-win situation. You are sort of damned if you do and damned if you don't.

I hate to think what would have happened if you had ruled in favor of the request of your lobbyist friend, Mr. Eckstein, who wanted you to delay a decision. I hate to think what would have

happened if you had overruled the opinion of practically every local community and elected official who was opposed to the project. I can imagine what the hearings would have been like then.

But as you testified, and as Mr. Skibine testified, and as we saw on tape today, instead of listening to your lobbyist friend, you listened to your career staff and based your decision professionally on their research and on their unified decision in opposition.

But I would like to go back to the meeting that you had with Mr. Paul Eckstein. He is an old friend of yours; he was a former friend from law school; he was a former friend in your law practice. He supported you in your campaigns for Governor and for President of the United States, but the truth is when he came to you on behalf of his clients, you did not intervene on his behalf. Is that correct?

Secretary BABBITT. That is correct.

Mrs. MALONEY. You didn't use your influence to help your old friend, and you made a decision based on what your staff recommended to you. And Mr. Eckstein's clients, his clients wanted you to approve a project that every member of the Wisconsin delegation opposed, that every member of the Minnesota delegation opposed, that the Wisconsin attorney general opposed, and the local community opposed. So if you had told your staff to approve this application, then there really would have probably been a reason to hold these hearings. Instead, you did the right thing, as you said; you based your decision on the facts and made it for the right reason.

I would like to ask you, Mr. Secretary, since it has been raised so many times in this hearing, do you think or do you believe that in any way campaign contributions in any way determined the outcome of this matter?

Secretary BABBITT. Congresswoman, I think the record is crystal clear as to how this decision was made, who the decisionmakers were, how they went about their job, and it was made on the merits with no outside influence relating to improper political activity or campaign contributions.

Mrs. MALONEY. It has been widely reported that the tribes that opposed the application made a contribution to the Democratic National Committee. The majority of this particular contribution was so-called soft money, and as you know, the President of the United States in his State of the Union called for a ban on soft money.

Do you think that it would help eliminate concerns about purchasing, say, policy or influence over policy? Do you think it would help if we banned soft money and just got money out of the system so that it didn't have any type of role or appearance of impropriety?

Secretary BABBITT. Well, yes, of course, I think that would make a major difference.

Now, let me add, I was listening when Michael Anderson testified, and I would remind you of a comment that he made. He said, you know, Indian tribes have the same right as other Americans to make contributions under existing law, and I would just sort of underline that to keep this thing in perspective. The issue is not campaign contributions; it is improper campaign contributions.

But, Congresswoman, if I could take 30 seconds, I would like to correct the record, or at least make sure there is no ambiguity in the record. When Mr. Sununu and I talked about the Wisconsin

Listening Conference, he terminated that exchange by saying, You were there at the Listening Conference to identify defects. Well, I wasn't there to identify defects. This was a general discussion, but this issue was discussed, but it was not in response to any particular effort to deal with that particular application. Thank you.

Mrs. MALONEY. Mr. Secretary, would you elaborate on how your Department makes decisions on land trusts or gaming? What is the role of community and local input? Do you put more of a focus on reservation casino gambling? Does that get more consideration than off-reservation? In this case, if the tribe was 185 miles away and partnered with a casino developer from Florida, do you look at the local participation and really the distance? I mean, to me it would have been a factor, the fact, not to mention your environmental record, the fact that the scenic riverway was going to be affected by this and many people were concerned about the environmental impact.

Could you elaborate on the process and the factors that would go into a professional decision?

Secretary BABBITT. Well, the issue and the process of finding no detriment to the surrounding community, as is required under the law, it seems to me goes to a number of factors. Certainly, the distance is an important factor, and we have discussed that in the record, that you know, it's a case for the applicants, a lot easier, when it is adjacent to the reservation than it is when it is 150 miles away.

The detriment issue has many facets. Now, some part of it is economic detriment, and that, of course, was the subject of the Hartman memo. That was an economic analysis.

It is my own view that detriment goes beyond just sort of an economic count sheet, and in fact, the opinion here shows that because there are other kinds of detriments that go to the quality of life in the community.

Now, I don't know how the Department can go out and measure quality of life impacts as part of detriment, and it seems to me that that makes the case very much for listening carefully and indulging a presumption in favor of the people who are best able to judge that, particularly, the elected leadership of the community.

Mr. BURTON. The gentlewoman's time has expired.

It is now just a little before 1. I know. I can hear the Secretary's stomach growling from here, at least I thought that was what I heard.

I would appreciate it if the Members would try to be back here at 1:30. We will break briefly for a sandwich. Try to be back promptly at 1:30 so we can expedite the hearing and get it concluded early this afternoon.

[Whereupon, at 1 p.m., the committee recessed to reconvene 1:30 p.m., this same day.]

Mr. BURTON. The committee will reconvene. Welcome back, Mr. Secretary. We will now continue with the questioning with Mr. Barr of Georgia for 10 minutes.

Mr. BARR. Thank you, Mr. Chairman. I see, Mr. Secretary, that Mr. Souder is here so I don't think we ought to get into a discussion of whether or not he looks conspiratorial. I might disagree

with you on that. I will also not ask you for the record whether I look conspiratorial. I do appreciate your——

Secretary BABBITT. Congressman, having traveled to California and back with you in 1 day in the last 30, you manifestly do not.

Mr. BARR. For the Sonny Bono funeral, let the record reflect. I do appreciate your being here and for the record I don't think you look conspiratorial either. There are obviously very serious matters that we are trying to get to the bottom of here and this whole matter has a very long history, beginning at least in 1993 in October with the request to the Department of the Interior, then, the 1994 decision by the BIA area office in Minneapolis approving the request and then things get kind of sticky.

As you know, in April 1995, Mr. Patrick O'Connor, who this committee heard from at length yesterday, became involved. Mr. Clinton becomes involved to some extent, if nothing else, being asked by O'Connor and then that sets in motion a whole series of events that stretch over the next couple of years. We have already discussed some of the admonitions by people in the government, including in the Interior Department and over at the White House urging folks to be very, very careful of this mess.

We have exhibit 304, the April 24, 1995, memo to Cheryl Mills. We have also the April 24, 1995, memorandum for Harold Ickes from a Ms. Avent. Both of those, obviously, with 20/20 hindsight raised a very legitimate concern that this is really a hot potato and every effort ought to be made to keep politics out of it. Unfortunately, some folks may not have heeded that advice. That is what really brings us here today.

You did discuss earlier, Mr. Secretary, staff, routine staff requests from the White House and so forth. One name that did not come up, I know that Mr. Waxman mentioned some names also with regard to whether or not certain people had contacted your office or you personally. Leon Panetta was not a name that was mentioned. Were you or your office ever contacted by Mr. Panetta with regard to this entire matter?

[Exhibit 304 follows:]

EXECUTIVE OFFICE OF THE PRESIDENT

24-Apr-1995 07:17pm

TO: Cheryl D. Mills

FROM: Michael T. Schmidt
Domestic Policy Council

CC: Carol H. Rasco
CC: Loretta T. Avent
CC: Katharine M. Button

SUBJECT: Call from Lobbiest Pat O'Connor

Cheryl,

This e-mail is to fill you in more detail about a call that Loretta and I were on with a Lobbyist/Fundraiser named Pat O'Connor. It was half-dictated to me by Loretta via phone, so I apologize in advance if it is unwieldy at times:

Pat O'connor is a lobbyist that represents a number of gaming tribes in Wisconsin and Minnesota. He is also, I believe, a DNC trustee of some sort. He is working on some off-reservation gaming project (dog racing I think) called "the Hudson Project," which under the Indian Gaming Regulatory Act will need Secretary Babbitt's approval to go forward since it is off reservation gaming.

Pat called Loretta last week on this issue. As you know, last year WH counsel advised Loretta that she should not meet with lobbyists or lawyers on Indian issues. Also, on April 29, the President signed a memorandum stating his strong support for the government-to-government relationship with the Tribes and direct consultation (which they hold us to in every letter they send!!). We get hit hard by Tribal leaders when we meet with Lobbyists, since many times the tribal leaders are not even aware that the lobbyists are calling us on their behalf. Loretta was out of town when Pat called, but asked Jay and Katy Button on her staff to return the calls from Pat, informing him that he needed to have the Tribal leader(s) that he represent send in whatever request that they had, and that she would work with the leaders directly. This is her standard response in these situations.

After several calls trying to get around Jay and Katy, on Wednesday of last week Pat sent in a memo from him (not from the Tribal leaders as requested) to Loretta asking to talk to her about intervening with Secretary Babbitt to allow this Hudson project to be able to do off-reservation gaming. This fax also

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stated that Loretta had told the leader of the Red Cliff Tribe (who Loretta has never met or spoken with) that she would intervene on their behalf (not true!). After this fax came in, Jay on Loretta's staff called Pat's office again asking for the letter from the tribal leader. It never came.

In the meantime, Pat bumped into the President today in Minnesota and mentioned to him that Loretta never returned his calls (technically true, but her staff did return them several times because she was travelling). A call came from AA1 this morning from Bruce Lindsey to Loretta to find out what had happened. Loretta reviewed the story I have written so far, and told Bruce that she would call Pat to explain our process. Loretta called me (since I do Indian Gaming Policy) and then conferenced me into a call with Mr. O'connor (her assistant Katy Button was also in on the call). And then, in Loretta's words, "his story began to unravel" in two ways: 1) He had to admit to Loretta that he had a return call from Loretta's office; 2) See the attached fax from him -- he had to back off of the statement about the leader of the Red Cliff Tribe talking to Loretta about this since it was not true. He was agitated that Loretta could not meet with him on this issue, and he took my name and number and promised to call me about this issue sometime this week, and that he would also bring it up in his meeting this Friday with Don Fowler at the DNC. He abruptly hung up before I could respond.

According to Loretta:

The first mistake Pat O'connor is making is trying to tie the President into an issue that he cannot be tied into for legal and political reasons. The White House should not be involved in this issue!

He must stop telling others that he has access to the WH on this issue. As you know, we legally cannot intervene with the Secretary of Interior on this issue.

Please have Harold call Don Fowler and explain that there are no secrets in Indian Country, that word of this conversation is already getting out and it would be political poison for the President or his staff to be anywhere near this issue.

Loretta consistently will not allow anyone take advantage of the President's best intentions and put him into potentially negative press situation (especially with 100 tribal leaders coming to town on Friday).

Loretta asks that you do whatever you think we need to do to take care of the President's best interests on this -- these Indian Gaming issues are always explosive (as the Cabazon situation made clear).

If you have any questions on any of this, call Katy Button to get ahold of Loretta in AZ, or call me at 6-5567 and I will try to

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give you whatever info you need.

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Secretary BABBITT. No. I never communicated with Leon Panetta on this matter.

Mr. BARR. Based on your knowledge of the White House and this particular administration and the people that are involved in it, which obviously is more extensive than mine, if the President of the United States had expressed an interest to his chief of staff to inquire into a matter that fell within the purview of a particular department, would that particular department or indeed the Secretary be notified that the President has expressed an interest in this, what is going on? Would that be in the normal course of events?

Secretary BABBITT. Congressman, that is an awfully broad hypothetical question. I guess acknowledging that, the answer would probably be, it is not the sort of thing that would come to my attention as a generic matter. I think that there is a tendency to underestimate the sort of Niagara of information and stuff that goes on in the executive branch of Government.

Mr. BARR. I am not talking about Niagara. I am talking about a laser beam. I am not talking about routine staff requests. I am talking about requests, and we have copies of this, if we could, a notation, a handwritten notation from the President of the United States. That is not a routine staff request, at least I would presume that it isn't, directed to Mr. Panetta stating "What's the deal on the Wisconsin tribe Indian dispute?"

We don't have a date on this, but according to the earlier efforts by the White House to keep this document confidential, the date that they put on it is apparently shortly before the election of 1996. This is a request by the President regarding a matter that we know on the public record he had been made aware of 2 years earlier and he asked a very specific question about a very specific matter within the jurisdiction of your office. And you are saying that that would not be the sort of thing that would be brought to your attention.

Secretary BABBITT. I think that is correct.

Mr. BARR. Whose attention in the Department of the Interior would a direct specific request from the President be brought to?

Secretary BABBITT. Again, this is all obviously hypothetical. My guess is that a memo like this——

Mr. BARR. This isn't hypothetical. This is an actual document.

Secretary BABBITT. My answer is hypothetical because I don't know the facts. I think normally an inquiry of this type would drift way down through the White House to some pretty low staff level where that staffer in a typical matter would call some staffer at the Interior Department. This is not an inquiry that would prompt anyone to call me. The issue is presumably some facts. The facts are out there, down there somewhere.

Mr. BARR. That would——

Secretary BABBITT. In my judgment.

Mr. BARR. That would raise very serious questions in my mind about how this administration operates. I mean not necessarily just in your Department, but the White House. Here we have a specific request from the President about a very sensitive matter. We know it is sensitive because the record is replete with memos going back and forth saying this is a hot potato, this is something very impor-

tant. We have one memo saying keep the President out of this. And yet the President makes a specific request to a specific person about the specific matter and you are saying in your view this would have been handled by some low level person as a routine inquiry?

Secretary BABBITT. Congressman, there is one way to deal with this and that is to ask Leon. I would suggest you might try that.

Mr. BARR. Well—what you are saying is in your view, one, you have no knowledge of this; correct?

Secretary BABBITT. Leon Panetta, I worked with Leon for, what, 3 or 4 years. He never called me about information requests like this. These are busy people. They have got things to do. They ship them down and——

Mr. BARR. That is my point. The President is a very busy person and one wonders why he would send this note were it not something of some importance to him. Would you speculate on why this was so important to the President that it demanded his personal attention shortly before the election of 1996?

Secretary BABBITT. Congressman, I have no knowledge or information or ideas on that subject.

Mr. BARR. When was the very first time that this matter was brought to your attention?

Secretary BABBITT. Which matter?

Mr. BARR. This whole matter of the Hudson Dog Track problem? The very first time.

Secretary BABBITT. Congressman, the earliest recollection that I have from looking back across the record, I believe would be the trip that I took to Wisconsin in the fall of 1994. Congressman, let me just say that my staff has said to me that the memo that you are showing me here is, is this a 1996 memo?

Mr. BARR. The White House did not want this made public, but it is public now, not, I mean before this point. They asserted privilege, apparently something that could not be sustained. According to their information which they furnished us, they have a date on it, fall 1996. Now, if they are wrong——

Secretary BABBITT. This is a year after the decision was made.

Mr. BARR. Right. But the President specifically asked about this and apparently it was never brought to your attention at that time. And that doesn't strike you as odd.

Secretary BABBITT. No.

Mr. BARR. OK. A lot of things do strike a number of people as odd, though, about this, this case, including the Attorney General of the United States of America and including a U.S. District Court judge, neither of whom anybody could say with a straight face would be part of any right wing conspiracy or probably any other kind of conspiracy.

The opinion, and we do have copies of the opinion, which I presume you all are familiar with, goes through in tremendous detail why this Federal judge is concerned. And I know our colleagues on the other side trivialize this opinion. It should not be. One should trivialize it at their own risk. It is a very specific opinion for a very specific purpose in unusual language because of its bluntness and the detail that the judge places in it.

The judge in that case originally had ruled in the opposite, as she did here. She says though on reflection and on much more careful review of the evidence, some very disturbing questions are raised in her mind about impropriety, including in your office. And I would respectfully invite your attention to this opinion which I think is probably a lot more problematic for you than your appearance here today because this is a district court judge, not just a Member of Congress. But this judge is very, very specific in terms of why these questions are very serious and need to be looked into and I think she is right on point.

Thank you, Mr. Chairman.

Mr. BURTON. The gentleman's time has expired. Mr. Waxman is recognized for 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman, I yield 5 minutes to Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman, and ranking member. Let us go back to this memo, Secretary Babbitt, the memo that Mr. Barr just referred to. Counsel tells me that there was no privilege asserted by the President with regard to this matter and Mr. Barr, I am sure, he will address that when it comes back around to him because I don't want the public to be misled on that. No. 2, it is my understanding that the decision in regard to this matter was made around July 14, 1995; is that correct?

Secretary BABBITT. That is correct.

Mr. CUMMINGS. Isn't it a fact that the document that Mr. Barr just spent so much time talking about is dated October 23, 1996? Are you familiar? Do you have the document?

Secretary BABBITT. Congressman, that is my understanding.

Mr. CUMMINGS. I just wanted to make sure we were very clear on that. Let us go back to that document that he spent so much time with a few moments ago. It says, "Leon, what's the deal on the Wisconsin tribe Indian dispute?" And it is signed, BC. I guess we can kind of assume those are the President's initials. But it sounds like he didn't know what the hell was going on. That is a year after, more than a year after.

Secretary BABBITT. I think that is a fair reading of this document.

Mr. CUMMINGS. It seems consistent with everything that you have said already. But let me go back to something else. You were speaking a little bit earlier. I listened to you very carefully. There were some things that you said as I listened to you, I said to myself, if any other decision had been made, you would have been damned, because you gave several elements that went into this decision. No. 1, you talked about the distance from the tribe, you talked about one out of nine decisions, I think. What did you say about one out of nine?

Secretary BABBITT. Since the Indian Gaming Regulatory Act was enacted, I think in 1988, there have been nine applications processed under that act and only one casino is up and operating as an off-reservation casino authorized under this act.

Mr. CUMMINGS. And that had unique facts to it; is that right? That had, the one that was OKed had unique facts to it; is that right?

Secretary BABBITT. Well, the one that was approved is in Milwaukee and the important thing about it is it had the support of the local community.

Mr. CUMMINGS. Right. I knew it was something.

So you had all of these elements. You had distance from the tribe. You had a precedent, pretty much, that only one out of nine had been approved and it had been approved with the consent of the local folk. Here you had the community against it; is that right? So that I am down to element No. 3 now and it was bipartisan, not only was it Democrats but it was Republicans and Congressmen and everybody else were against it; is that right?

Secretary BABBITT. That is correct.

Mr. CUMMINGS. Pretty much. You said, No. 4, that no Members of the Congress were for it, to your knowledge; is that right?

Secretary BABBITT. The record is absolutely devoid of any support from any Member of Congress. Now, I have been working this committee today to find some support here, and apparently there is none here either.

Mr. CUMMINGS. I don't think you are going to find any here, which is interesting.

Let us go on to No. 5. The fifth element that went into this, you said there were deficiencies in the application; is that right?

Secretary BABBITT. That is correct.

Mr. CUMMINGS. And then you went on to say that Skibine, his decision was consistent with the final decision; is that correct?

Secretary BABBITT. That is correct.

Mr. CUMMINGS. So you have got—this is just off the top of my head from what I have heard, you have got six elements, all of which are consistent with the decision that finally came out. If you had found in the other direction, God knows what would have happened to you. I mean, it is very interesting that you have got all of these factors, and I am very impressed with the one out of nine. The reason why I am so impressed with that is because apparently there was a pattern that was set and you all appeared to have been pretty consistent with that pattern.

Let me go back to something else. Last week we had occasion to listen to a few of your 65,000 employees. When I say a few, two or three, maybe four. And as I sat there and I listened to those folks, I was extremely impressed with their integrity and the fact that they made it very, very clear that their decisions were based upon very sound judgment, that they were based upon things that were completely independent of you, the impression that I got, or the President. And I mean now that you sit here, and you are under oath, can you, I mean, and I am pretty sure you are probably pretty much familiar with their testimony, is it your testimony today, Mr. Secretary, that those decisions that were made by Mr. Skibine and I think Mr. Anderson—is he the last person that signs off?

Secretary BABBITT. That is correct.

Mr. CUMMINGS. It had nothing to do with President Clinton? It sounds like it didn't have very much to do with you, either.

Secretary BABBITT. That is true.

Mr. CUMMINGS. Now, you talked a little bit earlier about delegation of authority. And you said something about that if you didn't

delegate, that you would have a long line of people at your door every day. And then a few moments ago someone on the other side talked about the whole question of your delegation, that is delegating authority. And the question became that if the White House were interested in this, why isn't the Secretary, why didn't the Secretary know that the White House is calling? I think you kind of chuckled a little bit and said, you know, that doesn't happen that way.

Can you tell us the way it does happen? The mere fact that the White House calls, someone from the White House, maybe that message never gets to you, is that what your testimony was a little bit earlier?

Secretary BABBITT. Well, yes, 99 percent of the communications from the White House never reach me and are never brought to my attention. And the reason is that there is an enormous flow of information and information requests in the Government, and the people who work in the White House know that the worst place to get an answer is from me at the top because the people who have the facts are down there and the normal channels, therefore, go down like that, across and then back up.

Mr. CUMMINGS. Thank you. My time is up. I yield back the balance.

Mr. KANJORSKI. Thank you, Mr. Cummings. Mr. Kucinich, 5 minutes.

Mr. KUCINICH. Thank you very much, Mr. Chairman.

I want to continue on, Mr. Secretary, I want to continue on the track that my colleague, Mr. Cummings, has just started. And that is that I want to clarify the record about the Department's decision-making process.

As several Interior Department officials have testified in their depositions, when those officials referred to a decision by the Secretary, it is shorthand for a decision by the Department of the Interior. They would say that the Secretary decided not to take the land into trust or the Secretary decided to reject an application and so forth, but what they mean is that that decision was being made to whatever official the responsibility or had been made by to whatever official the responsibility had been delegated to; is that——

Secretary BABBITT. That is correct.

Mr. KUCINICH. Let me ask you this, just to go over this territory again to be sure: Did you personally make a decision to reject the Hudson application?

Secretary BABBITT. No, I did not.

Mr. KUCINICH. In fact, you had delegated decisions on casino applications to the Assistant Secretary for Indian Affairs; is that correct?

Secretary BABBITT. That is correct.

Mr. KUCINICH. And in the Hudson case, the Assistant Secretary Ada Deer had recused herself because of the relationship with the applicant tribes; is that correct?

Secretary BABBITT. She recused herself. I believe the grounds for the recusal were, as I recall her testimony, that she had made a campaign contribution to the—one of the leaders of one of the applicant tribes and that she was uncomfortable as a member of the

Oneida tribe in Wisconsin in dealing with a Wisconsin issue that was so controversial. I am sorry. She was in Menominee, of course.

Mr. KUCINICH. So the decisionmaker, the person who actually signed the letter, was the Deputy Assistant Secretary Michael Anderson.

Secretary BABBITT. That is correct.

Mr. KUCINICH. And the decision to reject the application was made on the recommendation of the career staff, the Indian gaming recommendation staff?

Secretary BABBITT. Among others, yes.

Mr. KUCINICH. So did you have any role whatsoever?

Secretary BABBITT. No. Now, let me just say——

Mr. KUCINICH. That is whatsoever in the actual decision to reject the Hudson application.

Secretary BABBITT. No, I did not.

Mr. KUCINICH. Now, I want to go back for a moment to a point that my friend, Congressman Barr, raised because I think bringing up the date of the memo with the initials "BC" on it is relevant and I think the Congressman's attention to that matter is germane. However, it is also germane to look at the dates that were involved.

What was the date of this memo which is marked "BC"? "What's the deal on the Wisconsin tribe Indian dispute?" What is the date of that?

Secretary BABBITT. Congressman, I can't discern a date from the face of the memo. Mr. Barr said that I believe this was from the fall of 1996.

Mr. KUCINICH. Let's say it was around October 23, 1996. We know the date of the decision was July 14, 1995. So this memo, as Congressman Cummings points out, was more than a year later. That changes the context certainly. But we also know that Mr. Havenick was up here testifying, and Terry McAuliffe of course disputes whether there was a conversation between the two of them, but that conversation happened on August 15, 1996.

So I am going to suggest to members of the committee that it is quite possible that Mr. Havenick, who is a strong advocate for his case, was able to make his feelings known through legal action, so much so that it reached right to the White House and that, in fact, the President's memo might be because of action that Mr. Havenick started and not because of any action that started on behalf of the other side. So I thank the Secretary.

I yield back.

Mr. BURTON. The gentleman's time has expired. Mr. Sununu is recognized.

Mr. SUNUNU. Thank you, Mr. Chairman.

Good afternoon, Mr. Secretary. You don't believe that I am part of a conspiracy against you or the Department of the Interior or the President; do you?

Secretary BABBITT. I would not even accuse you of being part of a New Hampshire conspiracy much less this one.

Mr. SUNUNU. Thank you very much.

In your testimony you have commended the work of the dedicated civil servants, the career staff at Interior working under Mr. Skibine, and I would agree. They, and particularly Mr. Skibine, is to be credited with the quality of his testimony and certainly the

duration. You feel that their recommendation in this case was very important, correct?

Secretary BABBITT. They are—that is the whole purpose of the Indian gaming office, is to receive these applications and to process them.

Mr. SUNUNU. Would it be appropriate for political appointees to overrule their recommendation, if it was a unanimous recommendation on a point of policy?

Secretary BABBITT. The decisionmaking authority by virtue of my delegation is vested in the Assistant Secretary for Indian Affairs. Now, if the Assistant Secretary for—were the Assistant Secretary to disagree with a recommendation from the gaming office, that would almost certainly be elevated to my attention.

Mr. SUNUNU. Thank you very much. That is very important.

I want to draw your attention to some very substantive exhibits and the substantive issue of justifying the application under section 20, a section 20 finding of no detriment to the community.

I would just like to cite several key documents or read briefly from them. I think you are very familiar with them.

On June 8—these are all documents from the career staff—exhibit 303A–8, a memo from Mr. Hartman states, "The staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community." Second, Mr. Skibine, head of gaming, in his e-mail on June 6 states, "We want to avoid making a determination under section 20 of the IGRA."

[Exhibit 303 follows:]

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:
Indian Gaming-Management
MS-2070

June 8, 1995

To: Director, Indian Gaming Management Staff

From: Indian Gaming Management Staff

Subject: Application of the Sokaogon Community, the Lac Courte Oreilles BAnd, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)[1]

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables.

03194

[1] References are to the application documents submitted by the Minneapolis Area Office.

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EXHIBIT
303A-8

Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period for Indian tribes in Minnesota and Wisconsin was extended to April 30, 1995 by John Duffy, Counselor to Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act. 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
Chairman, St. Croix County Board of Supervisors, Hudson, WI (Vol. III, Tab 2*)
Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

03195

The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)

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EXHIBIT
303A-9

2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**
6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
11) Chairman, Bois Forte (Nett Lake) Reservation Business Committee (Vol. III, Tab 16***)
12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)
15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab
***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in the statement: "...it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

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EXHIBIT
303A-10

The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 stating that the resolution "does not retract, abrogate or supersede the April 18, 1994 Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the

County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, "Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment ($150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1¼% of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all businesses, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its Global Gaming Almanac 1995, is expected to increase to $1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin

In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes

On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of $450 million in 1993, and $495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be $114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were $80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market of $480 million, a Non-Minneapolis Gaming Market of $220 million, and a Wisconsin Market of $500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western

Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over $600 million.

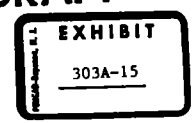
The projected Hudson market share of $80 to $115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by $50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5% ($25 million) Therefore, only $5 to $40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of $1 to $8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a $96.8 million net profit in 1993. A reduction of $8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At $96.8 million, the per enrolled member profit at Mystic Lake is $396,700. Reduced by $8 million, the amount would be $363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. I, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are not equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting a several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from $25 million in 1995 to $12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to re-order its spending plans.



Market Saturation.
The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of $500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts

1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers
The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime
Hudson Police Dept. Crime & Arrests, (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the *St. Paul Pioneer Press* with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell

3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm tc Area Businesses

A. Wage Level
The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns
One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

IV. Property Values
An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bieraugel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkead, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase
Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500; and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities
St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning
According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water
The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage
The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

V. Roads
The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94.

The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis

The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, " . . . it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects $42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of $18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay $1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

Hudson Dog Track Application

Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 -- a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any fax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians

are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto* giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

Mr. LESHY. Could you give me the exhibit numbers? You are going a little fast.

Mr. SUNUNU. The exhibit number there is 303A–8, and exhibit 316 is the second. The third, exhibit 320, is an e-mail dated June 28 from Mr. Skibine. Again, Indian gaming is also drafting a proposed memorandum to the Commissioner concluding that the acquisition is not detrimental to the surrounding community under section 20.

And finally, Mr. Skibine's testimony to this committee under oath, I wanted to avoid invoking section 20. All the way up until his final e-mail that I cited on June 28th, Mr. Skibine and all the staff at gaming believed firmly there was no justification for turning down this application on the basis of section 20 that there was a detriment to the community. But between June 28 and the decision memo on July 14th, that recommendation of George Skibine and the career staff was overruled. They, the career staff, were overruled. And in the final rejection, section 20 was cited.

I will just quote briefly from that, exhibit 328–2, the rejection letter: "We believe the proposed acquisition would be detrimental within the meaning of section 20."

Who overruled all the dedicated career civil servants at Indian gaming?

[Exhibits 316 and 320 follow:]

[24] From: George Skibine at -IOSIAE 6/6/95 2:34PM (952 bytes: 1 ln)
To: DAVE ETHERIDGE at -DOI/SOL_HQ, KEVIN MEISNER at -DOI/SOL_HQ, TROY WOODWARD at -DOI/SOL_HQ
Receipt Requested
Subject: discretinary authority to take land into trust
---------- Message Contents ----------

Text item 1: Text_1

As you know, I am drafting a document relating to the acquisition of the Hudson dog track by three Indian tribes in Wisconsin. The letter will decline to take the land into trust pursuant to the IRA and Part 151 relying on the discretionary authority of the Secretary not to take such land into trust. Are you aware of any cases addressing the Secretary's authority to refuse to take land into trust. The acquuisition is for gaming purposes, but we want to avoid making a determination under section 20 of IGRA.

[196] From: George Skibine at ~IOSIAE 6/28/95 6:27PM (8817 bytes: 1 ln, 1 fl)
To: TROY WOODWARD at ~DOI/SOL_HQ, KEVIN MEISNER at ~DOI/SOL_HQ, Hilda Manuel at ~IBIA, Paula L. Hart, Tom Hartman
Receipt Requested
Subject: Hudson decision letter
Unknown recipient: V. Heather Sibbison at ~IOS
---------- Message Contents ----------

Text item 1: Text_1

Please find attached a draft of the Hudson decision letter refusing to take land into trust pursuant to the discretionary authority of the Secretary and 25 CFR Part 151. IGMS is also drafting a proposed memorandum to the Commissioner concluding that the acquisition is not detrimental to the surrounding community under Section 20. That draft will be ready before the end of the week. These two drafts represent the alternatives available to the Secretaty, as discussed at previous meetings. As you recall, we advised the three tribes that IGMS review under section 20 would be completed by the end of the month. Please remember that I will be on leave next week, and on travel for 638 the week after that. Let me know what you think, and whether we need to meet to finalize our position on this issue by week's end. Thank you.....GTS

Document provided pursuant to Congressional request

EXHIBIT 320

Secretary BABBITT. I think that is an inaccurate characterization of all of these documents. I don't accept that characterization.

Mr. SUNUNU. I don't think it is an inaccurate characterization of Mr. Skibine's testimony, "I wanted to avoid invoking section 20." Nor his e-mail, "We want to avoid invoking section 20."

Secretary BABBITT. Well, there was a—the decision was based on both section 20 and the Indian Reorganization Act, and Mr. Skibine has in fact stated that he agrees with that decision.

Mr. SUNUNU. The facts state that he objected to invoking section 20. And I will further quote from Mr. Skibine.

Secretary BABBITT. I don't think he did object to section 20.

Mr. SUNUNU. He states in his testimony under oath and the documents I just presented to you, "I wanted to avoid invoking section 20," as late as June 28th. In his testimony to us he further said, "There were some in the Department that felt the record justified a decision under section 20." When asked, Who would they be? His reply, "They would be the ones that were up from the chain of command," political appointees.

Who overruled, Mr. Skibine?

Secretary BABBITT. Well, I think John Duffy addressed this yesterday. There was, in my understanding, a pretty spirited discussion. I absolutely reject this idea that anybody overruled anything. The record doesn't support that, not an iota of evidence to suggest that.

Mr. SUNUNU. Let me say, the evidence does support it directly, and it is related to Mr. Duffy. An e-mail dated July 6, 1995, exhibit 324, written by Troy Woodward, it states clearly, final paragraph, "The upshot of the meeting was that Duffy wants the letter rewritten to include a further reason for denying to take the land into trust under Section 20." It was, in fact, on or about July 6 that the decision was made to overrule Mr. Skibine. It was made by Mr. Duffy and he suggested that they rewrite the decision.

[Exhibit 324 follows:]

July 6, 1995

In a July 5, 1995 meeting attended by Duffy, Heather, Bob Anderson and Troy, the topic of the Hudson Dog Track was discussed. We discussed George's letter for Ada's signature informing the three Tribes that the Secretary was declining to take land into trust in accordance with his discretionary authority under 25 C.F.R. § 151.

The main issue discussed was why the letter indicated that the Secretary's denial was under Section 151 and not Section 20 of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701-21 (1988). Duffy advocated the position that this was the perfect opportunity to calm the fears of local communities that Indian gaming would not be foisted upon them without their consent. Duffy thinks that the local communities may veto off-reservation Indian gaming by objecting during the consultation process of Section 20. I expressed the opinion, advocated by George and which we have used to evaluate objections in the past, that the consultation process does not provide for an absolute veto by a mere objection, but requires that the objection be accompanied by evidence that the gaming establishment will actually have a detrimental impact (economic, social, developmental, etc.).

Bob agreed with Duffy in this case because a local Indian tribe, the St. Croix Chippewa, objected to the gaming establishment. [check to see that there is a local tribe] Therefore this decision could have the calming effect that Duffy wants without inflexibly locking the department into this policy because this case is easily distinguishable, i.e., there will not be many cases where a tribe wants to locate a casino near a neighboring tribe.

The upshot of the meeting was that Duffy wants the letter rewritten to include a further reason for denying to take the land into trust under Section 20 because the consultation process resulted in vehement and wide-spread local government and nearby Indian tribes' opposition to locating a casino at this site. TMW.

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Secretary BABBITT. I don't think anybody overruled anybody. I think that the record clearly shows that this decision was based on both section 20 and the Indian Reorganization Act and that the participants all concurred in basing it on both statutes.

Mr. SUNUNU. The decision does cite section 20, but the decision to cite section 20 was made by political appointees and not by Indian gaming. Thank you, Mr. Chairman.

Mr. BURTON. The gentleman's time has expired.

Who on your side—Mr. Kanjorski is recognized for 5 minutes.

Mr. KANJORSKI. To carry on that, let the record show that Mr. Skibine testified that he prepared the draft of the final decision before leaving for vacation sometime on June 12 or 13th. And if, in fact, there was a decision by Mr. Duffy to include section 20, that was really going out with a hand to allow the petitioner to have the right of appeal and judicial review. If that had not been included, they would have lost that right. So there wasn't any detriment to the dog track owners. It was to their benefit.

Secretary BABBITT. I, frankly, don't understand which conspiracy theory the section 20 is. The conspiracy is because, in fact, as you suggest, grounding it on section 20 was more favorable to the applicants.

Mr. KANJORSKI. Now, let's go along with conspiracy, Mr. Secretary. I have been going through this record here a little bit. You wouldn't be here today if your former law school roommate, law partner and friend, hadn't imposed his right to meet with you that fatal few days before this decision. I am not going to ask you to characterize your thoughts on Mr. Eckstein, but I think, one, Mr. Eckstein should be here. I don't know why someone with such important testimony hasn't been called before this committee, because the thing that upsets me is that in his testimony in 1997, for the first time Mr. Eckstein gets this October 30, 1997. He has this tremendous recollection that you indicated these things about political contributions and $500.

Now, it gets curiouser and curiouser because then in that deposition he says he certainly told Mr. Goff about that conversation the day that it was done, July 14, 1995. He thinks he told Mr. Moody, Jim Moody, a former Member of Congress, who was a lobbyist for his organization, and he thinks he told Mr. Havenick.

Now, why that is important is that conversation is probably the most significant statement of words that would justify any inference of political influence. And yet Mr. Eckstein, a lawyer, the owner of the dog track, and his chief publicist, who also had knowledge of this, did not mention in their affidavit in the suit they brought in January 1996 to overset the application or the decision; they never mentioned it until the October 30, 1997, testimony.

Now, why that is curious to me is it seems as we go on with this case there is tremendous recall that is occurring that seems to be beneficial to the appellants here. Mr. Havenick came before the committee, and by chance he remembers a tremendous conversation between the President's chief fund-raiser, Mr. McAuliffe, that he mentions to him at a fund-raiser at Mr. Berlin's home, or one of Mr. Berlin's fund-raisers, and for some reason they have all these high-priced lobbyists, high-priced lawyers, are in Federal district court in Wisconsin fighting this tremendous case, and none of

them seem to have any recollection of the most important evidence that could have helped their case until after the decision, the court coming down and saying, we will take extra administrative record discovery testimony to prove or to set aside this decision. And then all of a sudden, after 2 years of silence, new recollections occur.

Let me say that in the Wisconsin State Journal, Mr. Goff, after having been told this 2 years before, but then after the testimony in October 1997, he said, We consider this report to be the biggest piece of news in 2 years. I don't know, he had this information for 2 years before that. He didn't think it was very good news until at a Senate deposition in October 30, 1997, it came out.

I just wonder, I am not going to ask you to hypothesize on your friend who asked your indulgence that day, but I have got to say, in my mind that a well-trained lawyer is either Harvard or Yale, Mr. Secretary, I am not sure. Harvard or Yale; isn't it?

Secretary BABBITT. Yes, Harvard.

Mr. KANJORSKI. Mr. Eckstein didn't recognize the significance or the importance of that conversation in your office a day or two before the decision was had in the pursuit of their appeal case in Wisconsin for a period of more than 2½ years. That sounds incredible to me.

I think that, we talked about conspiracies here, and I just want to reiterate what is happening as I see it, Mr. Secretary. People are grabbing notes and paper and thrashing around to hang anything. Here we have a conspiracy being constructed on the other side by the President of the United States and his Chief of Staff, Leon Panetta, some year and 3 months after the decision is already made. Mr. Panetta sends the President a memo on a trip, late October, into Wisconsin, just before the election, a year and 3 months after the decision. The President apparently reads the memo and he says, what is the deal on the Wisconsin Indian tribe dispute, back to Leon. So obviously the White House and the President were avidly involved.

It is a year and 3 months after the decision was already made. It is out of the hands of the Secretary. It is into the courts by more than a year and a half, and the President still doesn't know anything about it. Yet we are to believe that this was one of the highest items handled in the campaign of 1996, and that everybody was involved in it because of this tremendous fund-raising opportunity.

I think what we have here is evidence that when people thrash around to find conspiracy or find conclusions, they can knit together the most unreasonable materials to make their scarf, if you will.

I see my time has expired, Mr. Chairman.

Mr. BURTON. Mr. Shadegg.

Mr. SHADEGG. Thank you Mr. Chairman.

Gee, the word "conspiracy" certainly came back here in the last few minutes.

It is appropriate for each of us, Mr. Secretary, to draw different inferences from this record. Your adamant assertion that the political appointees in the office did not overrule the career people, I believe, is clearly wrong under this record. And my colleague Mr. Sununu read some of these e-mails. He did not read all of them.

I would draw your attention to exhibit 327–2, an e-mail which I think very well illustrates this point. It is one of the culminating e-mails, although the same point is made in a later e-mail. It is written and it says, "Apparently Bob Anderson did review the letter late Monday. I checked with him Tuesday and he thought that since Duffy wanted the Section 20 finding so badly, that we would let the letter go" in—that is why we let it go in the letter. Then he goes on and says, "I still think that there was not enough evidence for a section 20 finding."

In your opening statement, Mr. Secretary, you repeatedly called this a consensus process, a consensus decision that resulted—or a consensus discussion that resulted in this decision. That, I think, Mr. Secretary, does not show a consensus.

But let's move to another area that I want to focus on in my questioning.

Secretary BABBITT. Could I just respond to that?

Mr. SHADEGG. Sure.

Secretary BABBITT. I fail to understand what it is you are all driving at. There was consensus on the decision.

Mr. SHADEGG. Mr. Secretary, with all respect, my time is limited.

Secretary BABBITT. The decision was based on both section 5 and section 20.

Mr. SHADEGG. Two people are saying they disagree. One of them overruled them, one higher up level.

Secretary BABBITT. They agreed on the result. There is——

Mr. SHADEGG. That is not the issue. The issue is whether they agreed, the whole line of questioning——

Secretary BABBITT. If I could respond. There is obviously a lively discussion going on, once people have agreed on the result, about how it is you base the decision and the relative role of section 20 versus the Indian Reorganization Act. Fine. What does it add up to?

Mr. SHADEGG. My time is limited. I think the record shows that they disagreed, and the e-mails show that.

I really would like to focus on a different issue. I think you have referred repeatedly to the record in this case. I want to point out that a part of this record is conduct by Mr. Ickes, which I would hope you would disassociate yourself with. Loretta Avent, and I hope you have seen these memos, wrote a memo to Mr. Ickes, it is exhibit 305–1, in which she makes a clear case that this decision is to be made on the merits. It is to be based on the rule of law, and the White House should in no way get involved, and that it would be political dynamite for the White House to get involved. She writes that memo, and she sends it to Mr. Ickes.

[Exhibit 305 follows:]

THE WHITE HOUSE

WASHINGTON

April 24, 1995

MEMORANDUM FOR HAROLD ICKES

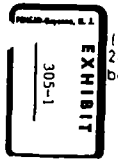
FROM : Loretta Avent

I just got a call from Bruce in reference to a person named Pat O'Connor, whom I don't know, who has called me on numerous occasions. Unfortunately, I was on my reservation circuit, so I asked both Jay Campbell and Katy Button in my office to call and advise him I was travelling and that before I could respond personally, I would need a letter from one of the tribal leaders he was representing explaining their situation and/or their concerns. Following the legal advice we have received concerning these kinds of issues, I have not and would not speak with him, or any lobbyist or lawyer.

Irrespective of lawyers and lobbyists say they know personally in the Administration , my first responsibility is to take care of the pres. because I am aware of the politics and the press surrounding this particular situation, it is in our best interest to keep it totally away from the white house in general, and the pres in particular. This is such a hot potato (like Cabazon) -- too hot to touch. The legal and political implications of our involvement would be disastrous. I am on my way into a meeting with five of our strongest tribal leaders (because of their significant voter turnout), who have already gone ballistic about other tribal governments who have greater access to the Administration because of their ability to pay hired guns (as they call them) and their belief that this . unfairly gets things to happen. They believe that when the President said "Government-to-Government" and "respect for tribal consultation" that it meant directly with them. They consider the lobbyists and lawyers trying to access us as staff they (the tribal leaders) pay and that their responsibility is to report and advise them (the tribal leaders), and as tribal leaders elected by their membership, they will do the business of tribal governments directly with our government.

This puts us in a Catch-22. To ensure we don't get caught in this web, I treat all 550 elected tribal leaders the same (I deal directly with them on behalf of the President).

Harold, my goal is to clean up as much as I can clean up (seven reservations in less than ten days) prior to the April 28th meeting. We are 98% there. I do not want this situation to be part of or anywhere near the meeting on the 28th. This is a



Department of Interior and Justice Department and that's where it should stay. Finally, the fact that he would even suggest I would discuss anything remotely connected to Indian gaming tells me he is not truly connected to Indian country (all 550 federally recognized tribes know I don't do gaming and say it!). Both Domestic Policy and Intergovernmental Affairs deal with this issue in this manner.

I explained this to Bruce and he understands the way I operate and I assured him I would make the call directly to advise the party that called. I will do this as soon as my meeting is over. I'll call later and give you an update. The press is just waiting for this kind of story. We don't need to give it to them.

One last concern leading into Friday, but I am working on that now. Because of the diversity and complexities within Indian Country and the constant changes in elected leadership, there is no lobbyist or lawyer that I will put before my responsibility to the President and his commitment to Indian Country (April 29, 1994).

cc: Maggie Williams
Cheryl Mills

Mr. SHADEGG. Mr. Ickes's response to that memo is not to agree with her; not to respond and say, yes, I concur; not in any way to accede to this prudent advice, but, rather, to immediately pick up the phone and call the lobbyist that wants to insert politics into this matter and to assign two, at least two, of his deputies to communicate with your Department about this.

Mr. Ickes then gets a letter, which we discussed at length yesterday, exhibit 311A, from Mr. O'Connor, the lobbyist, who seeks to inject Republican versus Democrat policies into this debate and say that the decision should go in favor of his clients because they are Democrats, and Democrats who gave money.

Mr. Ickes does not respond to this letter by saying there is—it would be improper to let politics or past contributions or future contributions to affect this decision. What Mr. Ickes does is to continue to stay involved, to continue to communicate with his staff, and indeed to have a yet subsequent conversation with a member of Mr. O'Connor's law firm, Mr. Schneider, in which he says, I will take care of it, in response to Mr. Schneider's request that he handle this.

My question to you, Mr. Babbitt, is, don't you believe that Mr. Ickes should have handled this dramatically different, and would you be in the spot you are in right now if, for example, he had responded to this and said, you are right, we should stay out of this; he had written back to Mr. O'Connor and said, Mr. O'Connor, politics doesn't belong in this; or if at a minimum he had warned his staffers, whom he then directed to communicate with your Department, to put a memo in the file, to send a memo over to your Department saying, we are getting political pressure on this, but we want you to do it on the merits? I think he put you in a terrible position, and I think his conduct was wrong. And I would like your response to that.

[Exhibit 311 follows:]

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
[illegible] PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400
FAX (202) 466-2198

May 8, 1995

Mr. Harold Ickes
Deputy Chief of Staff for Policy
and Political Affairs
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: Proposal pending at Interior to create trust lands at the Hudson Dog Track in Hudson, Wisconsin for an Indian Gaming Casino

Dear Mr. Ickes:

I appreciate your calling me concerning the above subject on Tuesday, April 25, and again on Wednesday, April 26. I assume these calls were prompted by my discussions with the President and Bruce Lindsey on April 24 when they were in Minneapolis. I returned your calls and talked to your assistant, Mr. Suttan, who advised that you were not in the office when I called. Since I had an appointment with Don Fowler on Friday, April 28, to discuss this matter, I decided not to try to contact you until after the Fowler meeting with the chairman of five of the many Minnesota and Wisconsin tribes that oppose the creation of the trust lands for gambling purposes and the bailout of the current dog track owners.

I have been advised that Chairman Fowler has talked to you about this matter and sent you a memo outlining the basis for the opposition to creating another gaming casino in this area. Since the Fowler memo was sent to you, the City Council of Hudson, Wisconsin, passed a resolution opposing the construction and operation of a casino at the dog track.

The Secretary of Interior has the discretion to create such trust lands if he finds:

1. it creates an economic benefit for the applicants, and
2. it does not create economic hardship for others.

The Minnesota and Wisconsin tribes who met with Interior officials explained the economic losses they would suffer if another casino were established in this area, due to the close

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EXHIBIT
311-1

proximity of their casinos. In addition, Coopers & Lybrand as well as Peat Marwick recently submitted to Interior a detailed analysis outlining the adverse economic repercussions that would result from this happening.

I am concerned that those at Interior who are involved are leaning toward creating trust lands. We requested a copy of the Arthur Anderson report which the petitioners commissioned which found no adverse financial impact. The copy submitted to us "blocked out" all of the vital information relating to the size of the operation, how many machines, tables, etc., which we need to know, as well as the statistics and reasoning used in determining that the surrounding casinos would not suffer a serious economic impact. We need this data in order to put our best case forward to Interior. We have no objection to Interior's submitting the Coopers & Lybrand or the Peat Marwick reports to the petitioners.

I would also like to relate the politics involved in this situation:

1. Governor Thompson of Wisconsin supports this project.

2. Senator Al D'Amato supports this project because it bails out Delaware North, the company that owns this defunct dog track and also operates another dog track in Wisconsin. Delaware North is located in Buffalo, New York.

3. The chairman of the Indian tribe in the forefront of this project is active in Republican party politics; this year he was an unsuccessful Republican candidate for the Wisconsin State Senate.

4. All of the representatives of the tribes that met with Chairman Fowler are Democrats and have been so for years. I can testify to their previous financial support to the DNC and the 1992 Clinton/Gore Campaign Committee.

5. The entire Minnesota (Democrats and Republicans) Congressional delegation oppose this project. The Wisconsin Democratic Congressional delegation (including Congressman Gunderson in whose district the dog track is located) oppose the project.

I certainly will appreciate it if you will meet with me and two representatives of the tribes as soon as you can work it into your schedule, since a decision by Interior is imminent. We are available on a 24-hour notice.

Yours very truly,

Patrick J. O'Connor

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EXHIBIT
311-2

Blind copies:

1. Chairman Don Fowler - David Mercer
2. Larry Kitto
3. Persons attending Friday meeting with Fowler

EXHIBIT
311-3

Secretary BABBITT. Well, you can assemble those facts and characterize his conduct that way. I don't. I think that in fairness you should direct these questions to Mr. Ickes. My responsibility is internal to the Interior Department. I am not, you know, on this wider ground that I discussed in my testimony this morning.

Mr. SHADEGG. Your staff communicates with his staff.

Secretary BABBITT. We have been through that 100 times. When there are information requests, they have got to go somewhere. And I don't draw the conclusion that you do.

Mr. SHADEGG. My conclusion is that he could have built a record which would have protected you in this instance by saying, I don't want to affect the merits. He could have sent a note back to Mrs. Avent saying, you are right. He could have sent a note to Mr. O'Connor. I would like to believe, Mr. Secretary, you would have done those things.

Secretary BABBITT. Well, I appreciate your comments. I guess I am at a loss to comment on a world of what ifs.

Mr. SHADEGG. My time has expired.

Mr. BURTON. Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. Secretary, I find very interesting the comments about consultation and whether this is a consensus process.

We have heard some of the other side suggest repeatedly that the Interior Department officials failed to consult with representatives of the applicant tribes. The majority makes this assertion despite clear deposition testimony to the contrary given by the career civil servants.

For example, when Thomas Hartman was asked whether there had been consultation with the applicant tribes, he testified, and I quote, "It was done extensively at the area office. They kind of work hand in glove there." Mr. Hartman went on to say, "In our office we did"—when the application was at the central office, "we met with the applicant tribes and representatives several times and discussed various issues both on the best interests and the not detrimental portions of the two-part test. So we consulted with them even while it was in central office."

You know, when we talk about this consultation process, I just wonder, and consensus process, it seems as if it would be kind of difficult to cure community opposition. I mean, all of us up here are elected officials. Many of us served on a local level. Opposition by communities is usually pretty—they pretty much dig in pretty deep. They have strong opinions. I am just wondering if the consultation process or this consensus process, is that something difficult to overcome from what you know; that is, when a community is against something?

Secretary BABBITT. Mr. Cummings, I appreciate the question. I think it is very important to deal with this consultation process, to remember that beyond the written record there was a continuing flow of oral communication back and forth and consultation, and that it is a mistake to jump to a conclusion that there was not adequate consultation just from reading documents. You must have the oral communication and the give and take.

Now, this issue of community opposition, it seems to me, stands out from the very beginning. And what happened is the opposition

actually hardened as the application progressed. And I don't see how anybody could miss that.

Now, what they do about it is another matter, because there wasn't much flexibility here to go to, you know, some other part of the county, somewhere else. It was absolutely anchored in this dog track.

Now, let me also add that there is a letter in the record from the three applicant tribes dated June 7. It is in the record. It says they have had an opportunity to review the comments submitted through May 17, 1995, on the application. Now, I haven't gone back to review all the comments, but I have a pretty good idea what those comments were. A lot of them were this issue of community opposition. It is not as if they didn't know about it. They had a chance to review it. They wrote back and acknowledged it.

Mr. CUMMINGS. What is the date of that document?

Secretary BABBITT. That letter is dated June 7, 1995.

Mr. CUMMINGS. 1995.

You know, it is interesting, too—did you have something else?

Secretary BABBITT. It just says, we urge that you promptly process the application, and we are willing to meet with you to discuss your concerns.

Mr. CUMMINGS. It is interesting, too, Mr. Skibine, who again, I reiterate, I have much respect for, his testimony, he gave similar testimony that I talked about earlier about consultation with applicant tribes. When asked whether the proponents and opponents of the proposed casino had an opportunity to submit their views for the record until a final decision was made, Mr. Skibine responded, yes, they did. Mr. Skibine went on to say, and I quote, "We met with them on several occasions where the purpose of their meeting was to try to discuss the merits of their application, and I think that we were given access to additional comments that were filed between February 8 and April 30, 1995, and I think they submitted something in writing at some point."

Did you have something else?

Secretary BABBITT. I think what was submitted in writing was the letter I just read.

Mr. CUMMINGS. Let me move on to something else that I find very interesting. Secretary Babbitt, according to the testimony we have heard during these 4 days of hearings, there were many lobbyists trying to influence the Department's decision.

The opponent tribes had lobbyists, and Mr. Havenick had lobbyists. In fact, it was Mr. Havenick, the dog track owner, who hired Paul Eckstein, your friend and former colleague, in hopes that he would be able to convince you to approve the application; isn't that correct?

Secretary BABBITT. I believe that's correct.

Mr. CUMMINGS. Despite Mr. Havenick's efforts to go to the top, Mr. Eckstein was unable to persuade you to get directly involved in the Hudson application; isn't that correct?

Secretary BABBITT. That is correct.

Mr. CUMMINGS. Earlier the majority referred to a memo from Scott Dacey, one of the opponent tribe lobbyists. The majority referred to a small part of the memo that looks incriminating. But also, in that memo, it says that Mr. Dacey spoke with Michael An-

derson, who had the final decision, and that Mr. Anderson told him that the Department was going to quote, "keep this on the merits," which meant that they were not going to outside influences, that they were going to stay strictly on the merits.

Are you familiar with that?

Secretary BABBITT. Yes, sir.

Mr. CUMMINGS. Does that surprise you that that is what Mr. Anderson would have said?

Secretary BABBITT. No, because I think that's clearly what the record shows for the entire process.

Mr. CUMMINGS. And I take it that you wanted a certain distance from certain kinds of decisions or I guess you wouldn't have delegated, would you?

Secretary BABBITT. Well, as a general matter, I am not involved in specific decisions that relate to contests between parties for specific authority, whether it's a permit, a transfer, a contract, because there are literally thousands of these decisions made, and you know, you can't efficiently sort of sit around in all these case-by-case decisions, and that is the reason that most of them are delegated, including this particular type of decision.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. BURTON. Mr. Hastert.

Mr. HASTERT. Thank you, Mr. Chairman.

Good afternoon, Mr. Secretary. I just want to come at this from a little different angle. I have followed your career for a long time. Indeed, I look at you as an honorable man. You came out of college, served in the Peace Corps in South America; is that correct?

Secretary BABBITT. Well, it was a community organization.

Mr. HASTERT. And studied economics in Peru, and then went on to be the Governor of the great State of Arizona. You have had quite a credible career. I just am a little bit amazed that you would buy into this thing of conspiracy. You have to look at the views and what has happened, and I would hope that we would all agree that there is no conspiracy here. We see facts different, and we are trying to build on that.

I would like to ask you a couple of questions, first of all. Would you agree, at least from the data that we have, that on September 14, 1994, there was, by the Department of Interior document, a finding of no significant impact, and it was prepared by the Ashland office? That was a local office, and they approved basically the recommendation that there was no negative impact. And then on November 15, 1994, the area office recommendation in Minneapolis said that there was no negative impact, and that application for a Class III gaming facility at Hudson satisfies section 20 of IGRA, and that was basically approved. Then on April 20, 1995, the area office recommendation in Minneapolis and the Bureau of Indian Affairs basically said again, under section 20, they would approve it, that there is no negative impact.

Then there is a draft memo from the Indian Gaming Management Staff, and the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community, and that was under section 20. And then, there is a draft memo we have, undated, from George Skibine to the Assistant Secretary of Indian Affairs, and

the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community.

In fact, even the surrounding community, we talk about the overwhelming people that were against it. Well, there were basically 71 letters from Wisconsin folks, 19 letters from Minnesota and 37 letters from people in other States that were against it. But for it, we had 69 letters from Wisconsin and 19 letters from other States, and a number of people, including State senators and mayors and county supervisors, and other folks that were for this thing in Hudson, WI. So we don't really see an overwhelming give or take. I would say that is what the record shows.

My question is, and I think it was unfair to you this morning, former Chairman Waxman was here and started talking about white lies, and you say, well, what I said might have been a white lie. Well, I wouldn't ever want to portray it in that sense. But quite frankly, we have to try to sit here and determine what are white lies, and what are gray lies, and what are brown lies and what are black lies. I just want to ask you this—ask as an old friend of yours, as a law partner, do you think he is an honest man; in your opinion?

Secretary BABBITT. Yes.

Mr. HASTERT. And then, with your saying this morning from Mr. Waxman that what you said to him could have been a white lie because we all do it and this type of stuff, could Eckstein actually be telling the truth when he said that you said in effect that the Indians gave a lot of money, around a half a million dollars, to squash the application?

Secretary BABBITT. I don't think that's——

Mr. HASTERT. That was a characterization about what you said what he said.

Secretary BABBITT. Description of what he said.

Mr. HASTERT. That is a characterization of what he said.

Secretary BABBITT. Yes, but I don't think that's accurate.

Mr. HASTERT. Well, I don't think that is word for word. Do you want me to read it word for word? Sure, I would be happy to do that.

Word for word is, according to the record of the Thompson investigation, Patrick O'Connor's letter to the Secretary: And I personally was offended by it; I couldn't believe that anyone would take the allegations in that letter seriously. And the Secretary said at some point when we were standing up, asked me rhetorically, do you know how much—I believe it was these tribes, but I cannot be clear, is the words to me, what "those tribes" meant, referred to, whether it was some specific tribes or tribes of gaming facilities on their reservations—had contributed to either the Democratic party or the Democratic candidates of the DNC. I can't be certain of that, but I am certain that he asked the general rhetorical question, and I said, I don't have the slightest idea. And he said, responded by saying, well, it's on the order of a half a million dollars, something like that.

Secretary BABBITT. I don't have any recollection of that conversation.

Mr. HASTERT. That was his testimony. Do you think he could have been telling the truth?

Secretary BABBITT. I can tell you that I have no recollection of that conversation. That's it.

Mr. HASTERT. Fine. That is great.

I just want to say that, I don't think there is any scheme, and I don't think that there is any—but we have to look at issues, and the issues are that, you know, the application was approved at the local level on 20, on section 20. Lobbyists close to the President were hired; Harold Ickes became involved; a decision to reject, under the Indian Gaming Regulatory Act, is made. We changed the section. They went to a different section, and Mr. Skibine in his testimony said that that is the first time in his recollection and probably in history that they went to a different section to make that decision.

So, Mr. Secretary, I appreciate you being here, and I certainly—in your shoes, it is a tough thing to do. You are an honorable man. But we have to make some conclusions from the facts that we have before us, from the testimony that was given in this committee, in other committees, especially in the other body, and we would like to come down to the bottom of this thing and find out just what the connections were, and that is all we are trying to do is our job. I appreciate your testimony.

Mr. BURTON. The gentleman's time has expired.

Mr. Kucinich.

Mr. KUCINICH. Thank you very much, Mr. Chairman.

I would also like to voice an agreement with my colleague in saying that we believe that the Secretary is an honorable man, and I know also there is such concurrence in this committee that the right decision was made, so we are making progress in agreeing on some things here.

Now, part of the problem in gathering information is you can have different interpretations of facts. People look at the world in different ways. We recently heard an interpretation of contacts between Mr. Ickes and the Interior Department staff. I have heard many different interpretations by Members and the nature of those contacts.

I would just like to point out to the chairman that sitting in the audience behind the Secretary is his assistant, Heather Sibbison, and she was the person, if I am correct, who responded to the status request from the White House, so rather than—we could actually be spared the burden, and it is a burden, of characterizing what happened during those contacts. We actually have an opportunity now, if the Chair would be so pleased, to hear directly from Ms. Sibbison. Would the Chair—do you have any willingness at all to hear what she has to say?

Mr. BURTON. We have deposed Ms. Sibbison, and we have the information that we needed for this hearing. The problem we have is we had to schedule the hearings over a 4-day period, and we had to make sure that everything fit into that schedule. So—but we did depose her, and we have the information that we think we need.

Mr. KUCINICH. I am sure it is helpful to have deposed her, and I would just say as a Member of this committee I think it would be helpful to the committee if we had the advantage of listening

to her testimony. But again the Chair has the authority to do that, and I understand that, and we understand that.

Now, I have heard many Members reassure us they are not on a witch-hunt, they just want to find the facts, and I am at a loss to understand why she hasn't been called, because she could tell us the simple truth, which I believe is that the calls from the White House were status inquiries from low-level staffers and volunteers. You know, it would be nice to hear from her, it would be nice to hear from Mr. Ickes, from Hilda Manuel, Congressman Gunderson, Governor Tommy Thompson. I feel like we are having a party here, but we are not inviting all the guests.

Now, there are a few other points here just to put in the record. We know again that the decision came down in 1995, I believe it was in July, and we also have here from the record the briefing papers for the President on September 1, 1996, where in this it points out that—this is the paper right here, Mr. Babbitt—where it points out that the administration has been criticized for the Department of Interior decision that affects Indian gambling in northwest Wisconsin. One tribe was denied permission to expand its casino and sued the United States, alleging among other things that the White House staff improperly influenced the Department of Interior's decision. And this is, it says, Bob—I can't make out the last name—DNC finance counsel, represented the aggrieved tribe.

Now, that is that direct quote. Now that is part of the record which briefed the President. Then, as a result of getting this briefing, the President then writes, and again, this is a year later, what is the deal on the Wisconsin Indian dispute? He writes this to Leon Panetta. On October 21, 1996, Leon Panetta responds to the President's memo, saying, in response to a note, a background memo for your visit to the Green Bay/Milwaukee area, you inquired about the status of a dispute between the Interior Department and the Native American tribe in Wisconsin. And then it goes on to talk about an attached memo. These are all, I believe, in the record right now. I just wanted to make sure that the sequence was clarified.

Now, I would like to turn my attention, Mr. Secretary, to some other testimony. This committee has heard from the dog track owner who needs a casino to save his business, and we have also heard from representatives of Indian tribes what the dog track owner needs in order to bring a request for an off-reservation casino. Now, we know for the record that the Department of Interior, in evaluating the dog track owner's business proposal, had to consider a preponderance of evidence that the community around the dog track opposed the casino.

Here is what I am wondering. I am someone who is very concerned about the effects of government policy on local communities. I was wondering, what would have been the policy if the Department had decided to allow tribes to go 80 to 200 miles off their reservation to open a casino against local opposition?

Secretary BABBITT. Well, had the Department in these—on these facts approved this, there would have been a firestorm not only in the community, but in the U.S. Congress, and I think John Duffy—I did not hear his testimony yesterday, but I know that this was a concern of his all along, and it may, in fact, account for some of

this ongoing discussion about section 20 versus the Indian Reorganization Act, because we were very concerned to administer this act in a way that was consistent with what we think Congress intended, and Congress could not have intended to, you know, have us administer this act in a way that would simply create a firestorm every time one of these things came down the road.

Mr. BURTON. The gentleman's time has expired.

Mr. KUCINICH. Thank you, Mr. Chairman.

Mr. BURTON. If you want to go another round, we can.

The gentleman from California, would you yield to me briefly?

Mr. HORN. Certainly.

Mr. BURTON. The gentleman is yielding to me briefly.

It is my understanding, Mr. Secretary, that there was a case involving an Indian casino that was put in trust some 300 miles from the tribal lands in Greektown, I think it was, in Detroit, MI?

Secretary BABBITT. Mr. Chairman, that's the Sault Ste. Marie Detroit case, and it had strong local support.

Mr. BURTON. But it was 300 miles away.

Secretary BABBITT. That is correct.

Mr. BURTON. Thank you.

Mr. HORN. Thank you, Mr. Chairman.

I am curious, Mr. Secretary. I read your statement very carefully last night and again this morning, but when you delivered this statement, it was quite different. Was that gone over by people in the White House, a rewrite? We had rather colorful language there. I think even "conspiracies" might have come up. Did you consult anybody in the White House? Did they clear it?

Secretary BABBITT. I have consulted no one in the White House about this.

Secretary BABBITT. How about in the Department of the Interior?

Secretary BABBITT. Well, certainly.

Mr. HORN. I mean, it is a complete rewrite.

Secretary BABBITT. I appreciate your appreciation of the eloquence of the statement. Those words are not exclusively my handiwork. I listened to the testimony over the 2 days, last week, and for that matter yesterday, and put this statement to bed over my dining room table about 5:30 last night.

Mr. HORN. Did you have the help of anybody that is an expert political consultant or an expert lawyer; Mr. Cutler, your own lawyer, and so forth?

Secretary BABBITT. Well, I have retained counsel, and they certainly review documents that I submit under oath to this committee, you bet.

Mr. HORN. Well, I hear in the news sometimes a rather well-known political consultant to the White House says, this is war, we have got a war room, and I am just curious if you found the war room between when I started the first draft and read the final remarks, because that is where it sounds like the conspiracy is going on. But I was a little curious, and whoever did write your speech deserves a high payment——

Secretary BABBITT. Thank you.

Mr. HORN [continuing]. Because it was well done.

Now, I am not going to ask you if I am part of the conspiracy or not. I notice a number of my colleagues have asked that, but I

can assure you I am not part of the conspiracy. What I am curious about here is the basic thing where, where in the law is community opposition listed as a consideration when taking land in trust? Maybe the Solicitor can help you on that one.

Secretary BABBITT. It's section 20. It says either community detriment or detriment to the community, I am not sure which.

Mr. HORN. So you are interpreting detriment to the community as the community opposition?

Secretary BABBITT. The decision, I think—the text of Michael Anderson's decision does a good job of explaining detriment to the community. It certainly involves economic detriment, but not exclusively. It goes to these other issues of congestion, community vision, quality of life. All of those things, I think, are included within the meaning and intention of the word "detriment."

Mr. HORN. How about people in the community that just don't like Indians? I happen to like Indians, and I can think——

Secretary BABBITT. That clearly does not qualify.

Mr. HORN. No. It was mentioned this morning that, stated that materials supporting the Hudson application has been left out of the record submitted to the Federal court in Wisconsin. Over the lunch break we reviewed the 14-volume record furnished to the court, and my statements happen to be correct. There are only two pages of the petition signatures in the 14 volumes. There are representations that there are an additional 152 pages somewhere else. If they are there, we can't find them.

Secretary BABBITT. Well, we are getting close. We have at least agreed on two pages.

Mr. HORN. No, to more than that. You do have two pages in there, however. However, the document I gave the Secretary earlier shows that this appears to be incorrect.

It is not the place to decide the issue, however, and, Mr. Chairman, I would like to ask to send the original document from which I was speaking to the Federal court, as well as the Attorney General's Task Force, so that we have all of it before them, and we will leave it to them to worry about.

Mr. BURTON. Would you yield to me briefly?

Mr. LESHY. Mr. Chairman, could I explain in response to the question about did we submit the full petition? I am told that Mr. Hartman actually converted the petition signatures that were in handwriting into a computer printout, and that is in the administrative record. The form of the petition that the Congressman submitted this morning is in the administrative record; it is just in type script for more legible reading than in handwritten form.

Mr. BURTON. Add a minute back on the clock.

Counsel, I have told every witness who testified that they are allowed to communicate with their counsel, but the counsel is not to respond to the committee. You are to respond to your client and he is to respond to the committee, and so if you have an objection or something, you are proper to make it, but I wish you would make it through Mr. Babbitt.

Let me just say, since we are now back on the time, you said that there was detriment to the community. Let me just say that there was a dog track already there. They had 8,000 parking spots. The estimate was only 4,000 of those parking spots were going to be

utilized, so that you weren't going to have the impact that you would have had with the dog track that was already there. The environmental impact study had been approved at the local level, and the environmental impact study when the dog track was first put there had been approved some time back. So gambling was already in the area.

Now, regarding the economic impact on the community, the tribes in question had already agreed to give $1.1 or $1.2 million to the local community to take care of the infrastructure problems, and the sewage problems, and other problems that might arise. So when you talk about detriment to the community, I would like to understand what you mean, because there was already a gambling facility there, had 8,000 parking spots, only 4,000 of which were going to be utilized. They had already reached an agreement with the community on the infrastructure problem by giving them a guarantee they would pay them for it, so what was the detriment to the community?

Secretary BABBITT. Mr. Chairman, I was watching when you had this dialog with Michael Anderson last week.

Mr. BURTON. Right.

Secretary BABBITT. And there was a rather thorough discussion of it. I would add only this. I got to tell you, I don't think it is exclusively for you and me to sit around haggling about detriment to the community. I think the city council of Hudson, WI, is the correct presumptive place.

Mr. BURTON. There was a referendum that passed prior to that, Mr. Secretary. So there is a mixed bag there. Let me just say——

Secretary BABBITT. There may well have been changing attitudes during that, but during the time that this was under discussion, the fact is that the Hudson city council had on record a resolution adamantly opposing this application.

Mr. BURTON. Four to two, four to two, and it was after the referendum passed.

Secretary BABBITT. That is correct.

Mr. BURTON. Let me just say this to you, Mr. Secretary. That is a subjective judgment on the part of what we believe to be political appointees who may have been influenced by political contributions, and that is what we are trying to get at. Mr. Duffy, if you read the record you see that he was involved deeply in the decisionmaking process. Mr. Skibine mentions that in his memo, which you guys tried to claim privilege on, which we did put in the record and is in the public domain, because people have a right to know. Mr. Skibine says very clearly that Mr. Duffy, a political appointee who is now benefiting at a law firm, who is now prevailing at a tribe, the Shakopees, he was involved in that decision, so it is a subjective thing. It really bothers me that you keep saying there is a detriment to the community when there is no real evidence to verify that.

I thank the gentleman for yielding.

Mr. HORN. Thank you. That's all, Mr. Chairman. I think you are absolutely right on the track.

Mr. BURTON. Mr. Barr. Mr. Miller.

Mr. MILLER. Mr. Chairman, thank you for yielding. Let me, if I may, yield my time right now to Mr. Barr.

Mr. BARR. Thank you.

Mr. Secretary, I would like to go back to the court opinion to which we were referring to earlier and which is a part of the record, the opinion of Judge Crabb in this case. As I indicated, although there is a continuing effort to trivialize the opinion, the judge, I think, was very specific and very deliberative in the words that she used. Yes, we all understand, those of us who are familiar with court proceedings, and I know you are, that this document does not represent the results of a trial on the merits of the case. That comes at a prior time, but the burden that was to be met by the plaintiffs in this case; that is, the Indian tribes, the defendants being yourself and the other Government officials, was a very high one, because they, the plaintiffs, were seeking to go beyond normal discovery proceedings, and the presumption of the court is not to allow that.

And that is indeed the judge's initial decision, was that on page 4, plaintiffs had not met their evidentiary burden, and therefore, the court granted defendant's motion not to allow more extensive discovery to go into the allegations of improprieties that plaintiffs believe were relevant to their presentation of the case. The court correctly indicated that a strong showing requirement would be necessary before she would rule in plaintiff's behalf. She did that. And the reason that she did that is because she believed, after reviewing evidence extensively, that the plaintiffs, indeed, met their burden, and as part of her background, as you can see from reading through the opinion, as I presume you have certainly, she made some very important comments about conspiracy theories.

We have been talking about that, and by coincidence, the judge addresses that. And she says at the top of page 6, "Although I am reluctant to accept conspiracy theories of government, it would be naive to think that abuses of power never take place where the government agencies never accede to strong political pressure. Drawing on all reasonable inferences from the undisputed facts in plaintiff's favor, I believe there is a distinct possibility that improper political influence affected Anderson's decision on plaintiff's application."

The court then moves through a detailed analysis of the evidence that sustains her conclusion and plaintiff's request, including possible contacts between John Duffy and others in the Department of the Interior and plaintiffs in February 1995, without notice to the plaintiffs, which is unusual. Not only is it unusual, the Government had a duty, she uses that word, "a duty," to consult with plaintiffs pursuant to 25 U.S.C. Section 2719 B(1)a. She concludes, "This is not my conclusion, it is the court's. The delay suggests that the Department did not contact plaintiffs because it was not interested in allowing plaintiffs to remedy the problems."

Later on, she contrasts that with another application in a different case, the Mashantucket Pequot decision, which she believes at the bottom of page 8 of her decision is relevant to plaintiff's attempt, in this case, to show political impropriety. She says that in that case, the Pequot tribe case, the Department, that is the Department of the Interior, approved the tribe's application even though there was strong local opposition because the tribe had made a good faith effort to address those concerns.

Thus, she says, local opposition is not always fatal to an application like plaintiff's. She finds that the Department's willingness in the subsequent decision, that is May 1996, to approve an application that evokes strong local opposition when it found that such opposition was fatal to plaintiff's application in this case, she found that to be in her words, "disconcerting."

She also, at great length, and I would again direct your attention, I know you are familiar with these letters, the meetings reflected in letters and memos with Don Fowler, the Democratic National Committee chairman, meetings with Harold Ickes, in 1995, exhibits we have already seen, exhibit No.s 310, 311–1, which clearly raised the possibility that political influence did come to bear in this case.

So I think the judge, certainly not in anticipation of these hearings, but consistent with these hearings, has raised in her mind through the extensive evidence that she has reviewed the very same questions, the very same concerns and come to the very same conclusion that this does not pass the smell test, and I would again respectfully urge careful study of the judge's ruling. I thank the Chair.

Secretary BABBITT. Congressman, could I respond to that?

Mr. BARR. I certainly have no problem with that. I am at the chairman's discretion on the timing.

Secretary BABBITT. I am inclined to go through that point by point, but perhaps what I can do——

Mr. BURTON. Pardon me. Of course you can respond, Mr. Secretary. We will give you all the time you need.

Secretary BABBITT. Thank you. Once again, the judge's ruling, as I understand it, is on a motion to expand discovery beyond the written record, and that, in fact, involves a fairly low threshold in which she is viewing the allegations as she says in the plaintiff's——

Mr. BARR. We would agree it is a fairly high burden on those seeking to get extensive discovery.

Secretary BABBITT. I would actually disagree.

Mr. BARR. OK. You and I have a different reading of the rules of civil procedure.

Secretary BABBITT. The rules of discovery of beyond a written record is hardly an unusual thing to do. Of course, this is precisely what has happened here in this committee and it is precisely what happened in the Thompson committee. You have had the occasion to make a record of testimony that has nowhere appeared in her court.

Now, let me just give you one or two examples. The opinion talks about the delay in contacting plaintiffs. George Skibine was questioned about that and he testified in very clear and convincing fashion as to what that was all about. The Crabb opinion deals with the issue of a Hartman memorandum. That issue has scarcely been mentioned today and the reason is that after weeks of bandying about conspiracies over the Hartman memo, Skibine and Hartman sat side by side and explained what that was about.

It didn't keep a couple people here today from once again mischaracterizing it, but the issue has been absolutely, unequivocally laid to rest. Judge Crabb, on the basis of the plaintiff's allega-

tions, raises the issue of Ada Deer's disqualification. That was an earlier conspiracy theory being peddled by the Thompson committee. Ada Deer has testified clearly and unequivocally about her recusal.

Now, in aid of this committee, you have at least dropped that one. I didn't have to deal with that one today.

Now, last, a word about the Pequot allegation. The fact is, that the Mashantucket Pequot trust issue did not even involve the Indian Gaming Regulatory Act. It didn't even apply. It was a piece of land adjacent to the reservation, taken into trust for a parking lot.

Well, enough. I just suggest that this committee ought to pay more attention not to what's being alleged in preliminary discovery in a Federal court, but what has been laid out here in extenso for the last 4 days.

Mr. BARR. I am paying attention to the words of the U.S. District Court judge, Mr. Secretary, and I would also note for the record that one piece of evidence that she did not have before her was your subsequent testimony and explanations and Mr. Eckstein's.

Mr. BURTON. Mr. Barr, your time has expired.

Mr. BARR. Thank you, Mr. Chairman.

Mr. BURTON. Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman.

Mr. Secretary, I want to thank you for spending the time that you have spent today in answering so candidly the many questions put before you. I might just add as a little followup on the most recent conversation that having spent 20 years as a trial lawyer that I would agree that your perception that the judge is at a very threshold stage of discovery and with our expanded discovery today do not have much of a burden to put that matter on further fact-finding and in essence, after having listened to much over the last 4 days as the facts develop, I don't think that these hearings are necessarily bent about putting matters to rest.

You are, Mr. Secretary, by now familiar with the fact that Heather Sibbison, a staff member of Interior, was the person who would have had contact, if any, with the White House.

Secretary BABBITT. That is correct.

Mr. TIERNEY. And what level of a staff person is Ms. Sibbison?

Secretary BABBITT. She was hired as an assistant to John Duffy.

Mr. TIERNEY. Do you now know that she was questioned under oath at a deposition some time ago?

Secretary BABBITT. I have read her deposition.

Mr. TIERNEY. Then have you read the part where Ms. Sibbison was asked, and I quote, "You testified earlier about a conversation or two that you had with Jennifer O'Connor at the White House." And Jennifer O'Connor, of course, was an aide to Harold Ickes, as I understand it.

"Is it your recollection that she was merely making a status inquiry into the application?" Ms. Sibbison answered: "That was my understanding, yes." Question: "And it wasn't that the White House was giving its opinion on the application?" Her answer was, that is "Correct." The question was, or "Dictating an outcome?" Ms. Sibbison's answer was, "She expressed no opinion as to the outcome or made no request regarding the outcome." The question:

"Did the White House dictate a date the decision had to be made by?" Ms. Sibbison's answer was, "Absolutely not. The date had absolutely nothing to do with the White House."

Now, I just made those quotes, Mr. Secretary, because I understand Ms. Sibbison has not and probably will not be called before this committee as a witness, and so I use that as somewhat of a basis of my comment that I think this hearing has been far from putting things to rest.

Is that your understanding of the colloquy that went between the questioner on the staff and Ms. Sibbison?

Secretary BABBITT. That is my understanding, but there are two parties who could shed light on that. Jennifer O'Connor and Heather Sibbison.

Mr. TIERNEY. And neither of them have been called by this committee; is that correct?

Secretary BABBITT. That is correct.

Mr. TIERNEY. To your knowledge, would that have been the only contact on this matter between your Department at any level and the White House at any level?

Secretary BABBITT. I believe that the contacts discussed in the Sibbison deposition are, to my knowledge, to my knowledge throughout this entire proceeding, record, and my recollection, the only contacts with anyone from the White House.

Mr. TIERNEY. Well, if you will suffer a couple of comments, Mr. Secretary, it has long been my opinion that the American people really want this committee to spend its time looking into campaign finance reform, because it is not just soft money, but hard money and the perception of all of the impact that that may have on our political system is a cause of great concern to the American people. But instead, we choose to spend our time in other ways. We don't look into the tobacco issue. We do look into situations where it's a stretch as long as there are Democrats that might be involved. It seems to have come down to a question of credibility, so if I could close my time, Mr. Secretary, just by asking you for a little bit of your background, sir. How long have you been in public service?

Secretary BABBITT. For approximately 23 years.

Mr. TIERNEY. And at what level did you first begin as a public servant?

Secretary BABBITT. I was elected Attorney General of Arizona.

Mr. TIERNEY. How many years did you hold that position?

Secretary BABBITT. For about, it was about 3 years.

Mr. TIERNEY. And what happened after that?

Secretary BABBITT. My—the Governor was appointed to become the Ambassador of Argentina. The Lieutenant Governor died of a heart attack in the middle of the night and I was next. So I became Governor.

Mr. TIERNEY. And how long did you serve as Governor?

Secretary BABBITT. For about 9 years.

Mr. TIERNEY. How many terms was that?

Secretary BABBITT. Two plus.

Mr. TIERNEY. And after were you Governor, sir?

Secretary BABBITT. I ran in the Democratic primaries in 1987 and 1988.

Mr. TIERNEY. For?

Secretary BABBITT. President.

Mr. TIERNEY. And after that?

Secretary BABBITT. I went home.

Mr. TIERNEY. And now you have recently been serving in the Interior; is that correct?

Secretary BABBITT. Yes.

Mr. TIERNEY. During any of those times that you held office and had to campaign with that office, did you obviously have to get involved with raising funds for your campaign?

Secretary BABBITT. Yes.

Mr. TIERNEY. At any time that you held any of those public offices, did you ever make a decision with regard to policy based on any matter having to do with contributions made to your campaign during the elections?

Secretary BABBITT. Not to my recollection, no.

Mr. TIERNEY. And sir, with regard to the matter that is before the committee these past 4 days, in any way, did any action that you took with regard to this casino issue have to do with contributions made to any individual of the Democratic party?

Secretary BABBITT. I did not participate in the decision, and I was not involved in any way in raising funds.

Mr. TIERNEY. In fact, somebody else wrote that decision for you, is that correct, for the Department?

Secretary BABBITT. Well, yes. I think the record shows that the decision, as signed by Michael Anderson, was drafted by George Skibine and then reworked, as I understand the record, edited and reworked by John Duffy and various other people who were in the process to work—and Michael Anderson, for that matter.

Mr. TIERNEY. So if you were going to have any undue influence on the results of those people's work, you would have had to go to each of them to get them to do something that they might not otherwise be inclined to do, and then, of course, they have all testified before this committee and we would have heard about it; is that correct?

Secretary BABBITT. That is correct.

Mr. TIERNEY. Mr. Secretary, I thank you for your time here today and for your service to the country.

Mr. BURTON. The gentleman's time has expired. Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

Just very briefly, to conclude and finish up the thought in going through the court's opinion, the date of the court's opinion is March 19, 1997, and the date of Mr. Eckstein's deposition is September 30, 1997, so the court obviously did not have before it Mr. Eckstein's deposition, including his references, and we have already discussed today, found on page 53 of his deposition, that, "the Secretary said at some point when we were standing up, asked me rhetorically, Do you know how much, I believe it was these tribes, had contributed to either the Democratic party or Democratic candidates or the DNC? I said, I don't have the slightest idea, and he responded by saying, well, it's on the order of half a million dollars, something like that."

I suspect that particularly that that portion of the court's opinion at page 8 where she discusses Mr. Eckstein and the inferences and the evidence that suspect her to believe political foul play would

probably not be weakened had this deposition been available to her. It may have been made available since then, I am not sure. But my only point is that this opinion, based on extensive, though obviously incomplete, since we have additional evidence since the date of this opinion, reaches some very disturbing and I think very credible conclusions.

I would yield 2 minutes to the gentleman from Indiana, Mr. Hastert.

Mr. HASTERT. Well, the gentleman is from Illinois, but I appreciate the gentleman from Georgia yielding me time.

Just two very brief points that I want to make. We talked about the local interest and why people were for or against and whether there were 69 people for it or 72 people against, pretty close. And the city council voted for it and then against it, but the issue was that there is a whole procedure that they followed according to section 20. And they were following section 20, and that was saying approved, approved, approved, approved, approved, and all of a sudden, Mr. Skibine became the administrator in this situation, and all of a sudden he got a message some place, because he even said it was approved once and then reached back into another whole section to actually say that this thing is not approved. So there is a real change in course, and I would question that.

The second thing I wanted to ask——

Mr. LESHY. Could I ask a question? Is this an exhibit?

Mr. BURTON. You cannot ask a question.

Mr. LESHY. Is this an exhibit?

Mr. BURTON. You cannot ask a question.

Mr. LESHY. Can the witness refer to what's on the screen?

Mr. HASTERT. Well, I would refer to basically the exhibit C–104, if you wish to know.

[Exhibit C–104 follows:]

Department of the Interior -- Positions in the Record

DATE	Department of the Interior Document	Recommendation
9-14-94	**FINDING OF NO SIGNIFICANT IMPACT ("FONSI")** Prepared by the Ashland, Wisconsin Office "[I]t has been determined that the proposed action will not have a significant impact on the quality of the human and/or natural environment, and the preparation of an Environmental Impact Statement will not be necessary."	**APPROVE**
11-15-94	**AREA OFFICE RECOMMENDATION** Minneapolis office of the BIA finishes its assessment of the application and sends strong recommendation to Washington that the application for a Class III gaming facility in Hudson satisfies Section 20 of IGRA.	**APPROVE**
4-20-95	**AREA OFFICE RECOMMENDATION** Minneapolis Area Office of the BIA sends Memo to Assistant Secretary of the Interior for Indian Affairs indicating that the three tribes' proposal complies with: (1) land acquisition regulations; (2) the National Environmental Policy Act, and (3) the required survey for hazardous substance on property to be acquired in trust and recommends "that after the requirements of the Indian Gaming Regulatory Act have been met, authorization should be provided to place the land into trust status for the benefit of the Tribes."	**APPROVE**
6-8-95	**DRAFT MEMO FROM THE INDIAN GAMING MANAGEMENT STAFF** "The staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community[.]"	**APPROVE**
Undated	**DRAFT MEMO FROM GEORGE SKIBINE TO THE ASSISTANT SECRETARY – INDIAN AFFAIRS** "The staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community[.]"	**APPROVE**
7-14-95	**MICHAEL ANDERSON, WHO KNEW THE TRIBES OPPOSED TO THE APPLICATION WERE SUBSTANTIAL CONTRIBUTORS AND WHO HAD LIMITED INVOLVEMENT IN THE MATTER, SIGNED A ONE AND A HALF PAGE LETTER DENYING THE APPLICATION**	**DENY**

EXHIBIT
C-104

Mr. LESHY. Do we have that?

Mr. BURTON. You have that.

Mr. HASTERT. I would like to continue on with basically one other question.

Mr. Secretary, the gentleman from Georgia talked about this discussion, I talked about the discussion that Mr. Eckstein had, the testimony that he gave before Mr. Thompson, which basically said that you thought that the Indians gave within the range of a half a million dollars and that was important.

Do you want me to reread it? You know what we are talking about. You don't want me to reread that; do you? I don't need to reread that?

The basis of the question is, we said maybe we got caught up in white lies today, the other side mentioned that several times, and you said, well, maybe that happened.

If the fact that it was truthful testimony by Mr. Eckstein, how did you know it was a half a million dollars? Somebody had to tell you.

Secretary BABBITT. Well——

Mr. HASTERT. I know you didn't remember that.

Secretary BABBITT. I have testified that I have no recollection of that discussion.

Mr. HASTERT. But don't you think it is an uncanny coincidence? How would he have known if somebody like you hadn't told him?

Secretary BABBITT. I am sorry, I don't understand the question.

Mr. HASTERT. Well, I think the question stands for itself. I understand why you don't understand the question, and I yield back.

Mr. BARR. Thank you.

For the record, since we have indicated the various background of various individuals to whom we have been referring, I would like for the record to note that Mr. Eckstein, who gave a sworn deposition, including portions of that I read just a few moments ago under oath is, according to his bio, a lifelong registered Democrat, one of those bioed in the Best Lawyers in America Reference Book, Harvard Law School, 1965. He was a co-prosecutor for former Arizona Governor, Evan Mecham in the impeachment. He is a managing partner of a major Phoenix law firm and has a very, very extensive and very distinguished career, as has the Secretary. So I would like to, since we have referred to statements that he has made under oath and used his name today, I want the record to reflect the man's distinguished background so that there is no inference that because nobody has referred to his distinguished background, his testimony under oath would be suspect.

Thank you, Mr. Chairman.

Mr. BURTON. You had an additional 30 seconds because of counsel's interruption.

Mr. BARR. I yield that to the gentleman from California, Mr. Horn.

Mr. HORN. Thank you very much.

Mr. Secretary, your counsel, to be charitable about it, misrepresented the record in terms of that document when he said it was referred to the court. We got the document finally and what is in the court's binder is not that document. Here is the difference: 797 cards, letters and petition signatures are on that computerized doc-

ument to which your counsel, the Solicitor of Interior, I think, referred, and we have in the original document, which is not in the court record, 1,413 petition signatures. In other words, counsel is saying it was all the same and it is just some were typed and Xeroxed and what not and some were in hand, and that means 616 people were left out. And I don't particularly appreciate that misrepresentation and I would like, Mr. Chairman, if I might, unanimous consent that this part of the record go right after the incident that I recall when the lawyer advised the cabinet officer and misrepresented it.

Mr. BURTON. Without objection, so ordered.

Mr. LESHY. I am told by staff that Mr. Hartman, who had the handwritten signatures converted to type script, eliminated duplicate signatures so that these 716 or however many there were taken out were actually in there twice.

Mr. BURTON. Counsel, I don't know if you understand what I said a while ago, but I want to refresh your memory. If Mr. Babbitt wants to respond, that is fine, and you are at liberty to tell Mr. Babbitt and Mr. Babbitt can respond to the committee. You are not a sworn witness, so if you have something to say I hope you will say it through your client.

Mr. WAXMAN. Reserving the right to object to the unanimous consent request.

Mr. BURTON. The gentleman will state it.

Mr. WAXMAN. Was the request that we place some document in a particular place in the record? Is that what you suggested?

Mr. HORN. No. I just simply want this addition that it was misrepresentation put after the incident when we were exchanging comments.

Mr. WAXMAN. You want to put something in the record that there was misrepresentation?

Mr. HORN. I am talking about the fact that the counsel misrepresented the document, and said, oh, we have everything in the record. Well, they don't have everything in the record. They need the original document in the record and that is all we are asking.

Mr. WAXMAN. I don't understand what your unanimous consent is. To what?

Mr. BURTON. He is asking——

Mr. HORN. This section of the record, including your remarks right now, and put it back where the issue came up.

Mr. SOUDER. Reserving the right to object——

Mr. WAXMAN. I am still recognized on my reservation.

Mr. SOUDER. I mean if you are going to object, I would like to make a statement.

Mr. BURTON. The gentleman from California has a reservation.

Mr. WAXMAN. I am trying to understand what the request is. You want to put some document in the record, but you have claimed it provides evidence in some way that there is a misrepresentation by counsel, that is your conclusion, but then if we are going to say that, then we ought to have the opportunity for counsel to insert some statement in the record in response to it, since he is being denied the opportunity here. Would the gentleman agree to that?

Mr. HORN. No. Counsel did respond to it, claiming that they had dropped duplicates, and all I am saying is that was not the original

discussion. The original discussion was, everything is there but some of it is typed up.

Mr. BURTON. Well, if the gentleman would suspend, let me just say I think we can resolve this by saying that I think this part of the record will reflect the discussion and the entire document will be placed in the record at this point. Obviously, we would like to have it in earlier, but if Mr. Waxman objects, it will be put into the record anyhow.

Do you object? If not, it will be in the record at this point.

Mr. WAXMAN. Well, it doesn't make much difference whether I object or not, it looks like. I am going to object to the unanimous consent request. If you want to put something in the record, go ahead and see if you can do it, if you think it fits in the record, but it seems to me that we ought to be fair. If we are going to put something in the record with accusations, we ought to be able to let somebody respond in the record to give their point of view. And I don't know why the gentleman from California would be unwilling to go along with that. He can put his point of view in there and the document and then let the counsel put a statement in there.

Mr. HORN. Right. And that discussion we are just having now would simply be moved several paragraphs back and put with the other discussion. But it doesn't matter to me, if you want to just leave it here. It is just that people could read that part of the record and think that that is the end of it, and what I am saying is, I would like a complete part of the record where it is all together.

Mr. WAXMAN. I object.

Mr. BURTON. It will be entered into the record at this point, then.

The gentleman's time has expired. Who is next on your side? Mr. Waxman.

Mr. WAXMAN. Mr. Chairman, I have been back and forth between this committee and another one where we are looking at tobacco policy. You said the Commerce Committee was looking at campaign finance investigations, of course they are not, and I have been very involved in that issue, so I am going to have to be over there a good part of the time. So I want to make some concluding statements of my own on this whole investigation.

Recently the New Republic magazine analyzed the culture of investigation. Their story, entitled, "Prosecutorial Indiscretion and the Criminalization of Politics," they made the obvious point, we should expose corruption and wrongdoing, and we all agree with that, but the article's main point is that we have a criminalization of our politics and Government. We now focus on the insignificant and not real corruption.

I think Justice Scalia, and I think I am fair in recalling his statement on the issue of an independent counsel, he argued that we used to have crimes and then we would try to find out who committed them. Now we have individuals and we try to find out if they committed a crime.

I think it is absolutely clear to me that there was extensive lobby on this issue of this Hudson Dog Track being turned into a casino, and it is clear to me that this is true on almost every issue we have in Washington where there is debate in the Congress, debate in the Department of Interior, or anywhere elsewhere the decision is

going to be made. But the key point, however, is that political contributions did not influence the Hudson Casino decision. That decision was made on the merits, and political pressure did not affect the decisionmaking process or those who actually made the decision. I think that is absolutely key and we should not lose sight of it.

We have one other peculiar factor in this case, and that is the meeting Secretary Babbitt had with Mr. Eckstein, and Secretary Babbitt clearly could have, and I think should have, handled this meeting in a better way. He is embarrassed about it, and I think appropriately. But we ought not to be appointing independent counsel for clumsy behavior. We shouldn't be holding meetings of Congress, four meetings of Congress on something that didn't amount to anything. I think that Mr. Babbitt has had to own up to his embarrassment in this situation, and I think that is the price you have to make sometimes for things you did that you in retrospect might have handled differently. But it would be a travesty if we had an independent counsel in this matter as some people have suggested. It seems to me that there is no grounds for an independent counsel, but a lot of people now want independent counsels for everything, particularly on the Republican side of the aisle, and it seems that it would be more appropriate punishment, which has already been exacted, that Mr. Babbitt as Secretary of the Interior have to participate in this hearing, as he did in the Senate hearing, as he may have to in the Natural Resources Committee hearing, and have to answer over and over and over again about how he handled that statement to Mr. Eckstein. That is an appropriate penalty for clumsiness. But I don't think clumsiness is the same thing as doing anything criminal.

I wanted to make those points. I want to make them very clearly. I think we have a lot of questions right now about what independent counsels ought to be doing, when they are appropriate, when they are not. In my view, it would be absolutely a travesty to have one under this situation. Nothing criminal has been—not even credible evidence has been established, in my opinion.

I yield to Mr. Kanjorski.

Mr. KANJORSKI. Mr. Secretary, are you clairvoyant?

Secretary BABBITT. No.

Mr. KANJORSKI. Well, it seems that your former law partner and law school buddy thought you were clairvoyant, because in July 1995, when he had that meeting in your office, he claims that you rhetorically asked the question, Do you have any idea what these tribes contribute to the Democrats? And then he recalls that you said, $500,000. That is very interesting, because you had to be clairvoyant for almost a year to a year-and-a-half under the majority Member's memo of contribution of these Indian tribes to the Democratic National Committee. The overwhelming amount of the $350,000 was made more than 15 months after that meeting.

Now, Mr. Eckstein either is exceptionally clairvoyant or you are clairvoyant, or Mr. Eckstein is recalling information 2 years after his statement was made based on relatively recent information that he could have put together through the FEC records, because no contributions, other than a very small, minimal amount of sev-

eral hundred dollars had been made by these tribes to any Democrat in that cycle prior to the meeting held in your office.

Secretary BABBITT. No. I simply do not recollect this discussion which has now been alleged, brought forward more than 2 years later. I have listened very carefully to the allegation. I'm still not certain. Because as I was listening once again to the deposition, it seems to me he was not clear in his rendition what tribes. And I think his rendition was in the past tense. But I would have to go back to the deposition to hear that.

Mr. BURTON. The gentleman's time has expired. I'll take my time now.

I'm going to give you my summary of this the way I view it. Mr. Eckstein testified under oath that Secretary Babbitt told him that Harold Ickes wanted the decision made without delay. Mr. Eckstein also testified that Secretary Babbitt asked him if he knew how much money the Indian tribes had donated to the DNC and told him it was about a half-a-million dollars.

Now, on July 13, a law partner, Mr. Schneider of O'Connor and Hannan, who was a lobbyist for the majority tribes that won, including the Shakopees and others, raised $420,000. It wasn't 2 years later. It was within a short period of time of that; $420,000. Mr. Eckstein has never wavered from his account of the events. Mr. Babbitt at first said that neither accusation was true. He said flat out it wasn't true at first. A year later he changed his story.

Secretary BABBITT. I disagree with that characterization. Let me just register my disagreement with that characterization.

Mr. BURTON. Put the time back on the clock. This is not a question, Mr. Secretary. Mr. Eckstein has never wavered from his account of the events. Mr. Babbitt at first said, according to Mr. Eckstein, that neither accusation was true.

A year later, he changed his story. He said that he did invoke Harold Ickes' name, but that he wasn't telling the truth. But he doesn't recall the comment about the half-a-million dollars. He recalls half of his statement.

On the day that the rejection was issued, the lead lobbyist for the wealthy opposing tribes noted in his billing records that he needed to get together with Harold Ickes at the White House to discuss fund-raising strategies the day that the rejection was issued.

Over the next 18 months, in addition to the $420,000 that Mr. Schneider raised, the seven wealthy tribes that opposed the casino at Hudson contributed over $350,000 to the DNC. There was a great deal of evidence to suggest that Harold Ickes did have an interest in the matter which lent credibility to Mr. Eckstein's statement.

Mr. Ickes' assistant called Mr. Babbitt's assistant three times to get information about this application. Mr. Ickes was lobbied twice about the dog track by Tom Schneider, a close friend of the President's and a major Democrat fund-raiser. Mr. Ickes told Mr. Schneider he would followup on it.

On May 17, the applicant tribes met with Interior Department staff and were not informed of any problems with the application. That night a group of staff had a private meeting and decided that the application would not be approved. The next day, Mr. Ickes got

a memo from his assistant informing him that Interior was virtually certain to reject the application. This was 2 months before the decision was issued.

Mr. Ickes was clearly being kept informed as the process moved forward. Why? If Mr. Ickes wasn't in the loop, why was he asking for information about this? Mr. Babbitt said he told Mr. Eckstein or Mr. Eckstein said Babbitt told him that it was because Ickes was interested. Mr. Babbitt said that that was a made-up story.

Nevertheless, Mr. Ickes did get a memo 2 months before the decision was made public in April 1995. Patrick O'Connor, the lead lobbyist for the wealthy tribes, personally lobbied the President on the dog track issue in Minneapolis. Bruce Lindsey, one of the President's most trusted advisers called from Air Force One to a White House staffer and told him to return O'Connor's calls.

The White House staffer wrote a very strong memo stating that this was very risky and political poison. Patrick O'Connor and his partner, Tom Schneider, lobbied the President, Ickes, Don Fowler of the DNC, Terry McAuliffe, the chief fund-raiser for the Clinton/Gore campaign, the Minnesota delegation and Vice President Gore's most trusted advisers.

Mr. O'Connor and Larry Kitto sent a letter out and I will quote from the letter. "As witnessed in the fight to stop the Hudson Dog Track proposal, the Office of the President can and will work on our behalf when asked to do so." This was a fund-raising letter for both the President and the Vice President asking for $1,000 from individuals in the tribes.

The Justice Department lawyer, who was representing the Interior Department in the civil suit, wrote in a memo that he had reviewed the entire administrative record. The Department had not followed its own procedure or law and he recommended that they settle the lawsuit. The Interior Department never consulted with the applicant tribes to give them a chance to correct any flaws in their application, and that is required by law and they didn't do it.

The Department extended the comment period on the application for 2 months and kept it a secret from the applicant tribes. The Federal judge overseeing the civil suit ruled that there was considerable evidence of improper political interference. We have received eight sworn affidavits attesting that George Skibine, the career employee in charge of the Indian Gaming Staff, met with a group of supporters of the casino in Wisconsin in 1996, and told them that the career staff wanted to approve the application, but when it got to the political appointees, they rejected it. You said it differently here, but this was sworn by eight people.

Two of Secretary Babbitt's senior staffers, Tom Collier, his chief of staff, and his counsel, John Duffy, left the Department and got lucrative positions at his former law firm, one of whom was there before, representing the wealthiest of the tribes, the Shakopees, that benefited from the decision to reject the casino.

John Duffy was one of the key decisionmakers, as the evidence clearly shows. Five times career Interior Department staff wrote lengthy detailed reports stating there was no evidence of detriment to the local community. Yet Michael Anderson, the political appointee who signed the rejecting letter cited detriments to the local community, and we, I think, have proved here that wasn't the case.

When Skibine was deposed, he conceded there was no evidence of concrete detriment to the local community and that the application could not be rejected based on the Indian Gaming Regulatory Act. The dog track was already there. There was already a gambling facility there. It had already been approved by the local community. It had passed environmental muster. Yet, they said that it was going to be a detriment to the community even though the Indian tribes had made a deal with the community to give them $1.1 million to take care of the infrastructure problems.

Last week, Fred Havenick testified that Terry McAuliffe, the top Clinton/Gore finance person told him, inadvertently, I might add, that he had killed the deal while Mr. McAuliffe had apparently denied Mr. Havenick's representations, Mr. O'Connor did testify to discussing fund-raising with Mr. McAuliffe and O'Connor's billing records reflect discussions of fund-raising strategies with Ickes, Fowler and McAuliffe on the day that the application was rejected.

No evidence; all circumstantial. In a May 25, 1995, memo, a lobbyist for the opposing tribes wrote that the career people, including Michael Anderson, with whom he met on May 22, wanted to, quote, "Keep the issue on the merits, but things might change when the politicians like Babbitt and Duffy become involved. But without the law on their side, it will be difficult to kill the deal." That is a statement from a lobbyist trying to kill the deal himself, who met with Michael Anderson, who eventually signed the letter. Even the lobbyist opposing this deal didn't think the law was on his side.

This is just some of the information. And so I hope that there is an independent counsel that looks into this. Now, you talk about criminal activity. Maybe there is no criminal activity. But the appointment of an independent counsel is not just to prove criminal activity. It is to investigate alleged criminal activities. We have enough evidence, I think, here in these hearings to prove beyond any doubt whatsoever that there ought to be somebody to investigate this very thoroughly. We cannot indict anybody in this body. All we can do is expose the information to the American people. That is what we are trying to do. But the independent counsel or the Justice Department needs to look into this to see if there was criminal activity because a poor Indian tribe was hurt, while a large and wealthy Indian tribe was not hurt.

Just a second, I'll finish. I'll give you extra time. If there was a miscarriage of justice it needs to be corrected and those who broke the law, if there was a law broken, need to be held accountable. This is a Nation of laws and not of men. I know that people who come before this body have said time and again, we didn't do anything wrong, but there certainly are enough questions here that the American people ought to demand a thorough investigation by the Justice Department or an independent counsel.

Who's next on your side? Mrs. Maloney.

Secretary BABBITT. Mr. Chairman, you've just repeated at great length the very same things you said at the very beginning of this hearing. All I can say is that if you are bound on a conspiracy and oblivious to the facts, I hardly know where to begin. But the record of this proceeding is absolutely at variance with the allegations you just made.

Mr. BURTON. We will see.

Mrs. MALONEY. Mr. Chairman, that was a fine statement you made. Yet, the evidence that we gathered in the past 4 days of hearings contradicts practically everything you said, the evidence that is on the record here that was gathered by this committee's hearings. I just want to put in the record the majority Member's memo on, "contributions" and add my voice to Mr. Kanjorski's at the meeting with Mr. Eckstein, all of these contributions came in afterwards. How did he know that this was going to happen? Was he a clairvoyant, as he said?

I would like to raise a particular person's name who has been raised many times today, and I raise it because he happens to be a former constituent from the district that I am honored to represent, and that is Mr. Harold Ickes. I just want to make it very crystal clear, Mr. Secretary, and I want to ask you one last time, you have answered many times, but I want to be very clear. Harold Ickes never contacted you either directly or indirectly, personally or through staff on the Hudson Casino matter; is that correct?

Secretary BABBITT. That is correct.

Mrs. MALONEY. Second, and neither he nor anyone else in the White House gave you instructions on the timing or substance of the Hudson Casino matter.

Secretary BABBITT. That is correct.

Mrs. MALONEY. I would like to go back to a point that some of my Republican colleagues have raised over and over and over again today, the Republicans have tried to make the case that the lower level career employees thought there wasn't enough proof, that the project would be detrimental to the community to rely on section 20. But with the political community, the business leaders expressing the belief that the project will be detrimental to their community, isn't there a strong presumption that it would, indeed, be detrimental, Mr. Secretary?

Secretary BABBITT. Well, I believe the record shows that detriment within the meaning of section 20 and to the extent that is applied to the Indian Reorganization Act is a great deal more than simply a calculator analysis of economic detriment. I believe that that's at the center of the discussion that clearly went along in May and June in this process, is attempting to reach a consensus about the meaning of detriment.

My view of this was, is and will continue to be that detriment is measured in terms of economic loss, in terms of perceptions about traffic, the nature of the community, quality of life and all of the other issues that were uppermost in the minds of the local leaders when they opposed it.

Mrs. MALONEY. Mr. Secretary, the point that I pose is one of the most important, is the fact that the elected representatives on all levels of government, city, State and Federal, the entire Wisconsin delegation, Republican and Democratic, the Minnesota delegation, opposed the project.

Now, I would never venture to speak for another Member of Congress or for the Wisconsin or Minnesota delegation. But I can speak for the New York delegation. I can tell you that if the Department of Interior had overruled a unanimous bipartisan position of the New York delegation, you would have never heard the end of it. We would have had you and the President down in our communities

in New York State reviewing and talking to the people, explaining why some bureaucrat overruled their opinion. To me, that is very important. People represent a point of view. They represent people. These people were saying they didn't want it. So I ask, Mr. Chairman, what is the fuss about? What is the fuss about? We had a project that everyone was uniformly opposed to, except for a tribe that was 185 miles away that was partnered with a casino developer from Florida. That is what we are talking about. We are talking about every level of government, environmental problems, all kinds of problems.

I can tell you, Mr. Secretary, with all due respect, if your agency had ruled against the express opinion of the New York delegation, we would have taken the issue to the floor of Congress. And I believe that our brothers and sisters in Congress, both Democratic and Republican, would have joined with us in a vote to protect the interest and the opinion of the people that are affected, the people from the district where the casino was proposed. I must tell you, this is very personally important to me, because I confront the same situation now in my own district.

Someone is trying to bring in gambling, into my district, and my constituents uniformly are telling me they don't want it. I feel when we have a democracy, the people spoke through their mayor, through their Governor, through their city council, through their State representatives, through their Members of Congress, they said please don't do it to us. We don't want it. You did what the people said. I can't imagine how you could come up with another opinion.

Mr. Chairman, I do not understand what the fuss is about. He listened to the delegation. I can tell you that if he hadn't listened to the delegation, it would have gone to the floor of Congress and we would have reversed it on a vote on the floor of Congress. My time is up, Mr. Chairman. I have a few more questions. I have a lot more I would like to get off my chest on this, particularly since I am confronting the same problem right now as we speak back in my district in New York.

Mr. SOUDER [presiding]. The time has long past expired, but we may have a second round. We are still working that out. I am going to do my 5 minutes because I haven't had a chance to do mine yet. I would like first on the screen, one of the things we have heard steadily today on the access of influence on the Hudson decision is that the poor Indian tribes had this tremendous lobbying power. I want to make it clear that it was not an equal balance, that both sides, at least the applicants, had some access and quite a bit early on with the Interior staff. They did have a basic "you-didn't-make-it" meeting with Secretary Babbitt, and a meeting at that point with John Duffy. But when you look at the list of who the opponents contacted, it is not a balanced list and it was not a balanced lobbying effort.

What my understanding is, Mr. Secretary, is that you are saying that the contacts that are political, that the opponents made, you did not respond to and you don't know anybody in your Department who responded to those contacts; is that correct?

[The chart referred to follows:]

Access/Influence on Hudson Decision

Opponents

POTUS
VPOTUS
Harold Ickes
Bruce Lindsey
Don Fowler
David Mercer
Terry McAuliffe
Laura Hartigan
Tom Collier
John Duffy
Interior Staff

Applicants

Bruce Babbitt
John Duffy
Interior Staff

Secretary BABBITT. I think we have to be careful about political. For example, there was a meeting with the Minnesota delegation. The letter is clearly political. They are Congressmen.

Mr. SOUDER. The names I have on there are all White House and Democratic National Committee. I'm not talking about the Congressmen. My understanding of your testimony today has been that you did not deal with any of these people, and these people did not influence your decision directly, correct?

Secretary BABBITT. This lobbying was going on outside the process.

Mr. SOUDER. Prior to Hudson, did the White House ever comment to you or anyone in your Department on another gambling decision that was pending in your Department?

Mr. BABBITT. Well, no one here commented to me on this decision.

Mr. SOUDER. On any other Indian gambling decision, did anybody at the White House comment to you in advance of a decision?

Secretary BABBITT. I don't recall. I'd have to go back and check, but I do not recall any such comment.

Mr. SOUDER. So you will not say categorically that you have never been influenced or the White House has never attempted to contact you prior to——

Secretary BABBITT. There may well have been status checks.

Mr. SOUDER. Let me make it more specific.

Secretary BABBITT. Beyond status checks, I'm quite confident that there have not been any other contacts on any gaming issues. Status checks, I'd have to check.

Mr. SOUDER. You have never made an off-reservation gaming decision based on direction from the White House?

Secretary BABBITT. That is absolutely the case. I have never—this Department has never made an off-reservation decision that was to my knowledge influenced in any way by what was going on outside the process at the White House or anywhere else.

Mr. SOUDER. In any way includes timing. You've never made an Indian gambling decision based on timing besides Hudson?

Secretary BABBITT. Not that I'm aware of.

Mr. SOUDER. If I could have on the screen——

Mr. KANJORSKI. Will the gentleman yield one moment?

Mr. SOUDER. Yes.

Mr. KANJORSKI. In regard to the description on the screen.

Mr. SOUDER. As long as it doesn't count on my time.

Mr. KANJORSKI. We can agree it won't.

Is that an exhibit that somebody prepared by outside knowledge and some factual information or is this your exhibit?

Mr. SOUDER. I asked it to be developed of what contacts have come up during the hearing.

Mr. KANJORSKI. Right. I'm reading opponents and applicants, and I see Terry McAuliffe is listed on the opponents. To my best recollection, Mr. Havenick brought his name in; that he talked to him at a fund-raiser in Florida, at Mr. Berlin's fund-raiser. So why isn't he on the applicants side?

Mr. SOUDER. Because Mr. McAuliffe had inside information that the decision was turned down, and he talked to Mr. Havenick because he thought that he would be pleased that——

Mr. KANJORSKI. I thought this said access and influence. The access here was by the dog track owner to McAuliffe——

Mr. SOUDER. Mr. McAuliffe told a piece of false information to Mr. Havenick, information that could have only come from Patrick O'Connor, which meant that McAuliffe was talking with O'Connor. It is impossible that the opponents weren't trying to influence Terry McAuliffe, who only had factual misinformation. I claim back my time. I understand what you are trying to say, but I did have a reason for doing that.

Mr. KANJORSKI. I just wanted to put the point that Mr. McAuliffe in the newspaper has disclaimed ever having had this discussion with Mr. Havenick. So that we're going to be allowed to put any imaginary list, names or people here to suggest access.

Mr. SOUDER. I would suggest we had several situations that showed that Terry McAuliffe at least had information if not direct influence. But I just wanted to make the point it hasn't been balanced. I wanted to look at exhibit 296–A–6.

Mr. Secretary, did you know lobbyist Patrick O'Connor who testified before us yesterday?

Secretary BABBITT. Yes.

Mr. SOUDER. You're aware that he was involved in fund-raising for your 1988 Presidential campaign?

Secretary BABBITT. My recollection is that Patrick O'Connor was probably asked to help qualify us in Minnesota. I'm not aware of whether or to what extent he did. But I suspect he was asked to qualify us in Minnesota.

Mr. SOUDER. By qualifying, you mean getting the Federal matching funds, which is fund-raising; is that correct?

Secretary BABBITT. Right.

Mr. SOUDER. Do you recall any contacts that Mr. O'Connor had with you or your staff on this Hudson Casino?

Secretary BABBITT. Do I recall any contact with——

Mr. SOUDER. Do you know of any?

Secretary BABBITT. With Pat O'Connor in the Hudson thing? I have had no contact with Patrick O'Connor in the course of the Hudson issue.

Mr. SOUDER. Thank you.

I wanted to ask a couple of questions regarding the July 14 meeting you had with Mr. Eckstein, Do you recall discussing the meeting with anyone at that time?

Secretary BABBITT. I do not.

Mr. SOUDER. What about after?

Secretary BABBITT. I do not.

Mr. SOUDER. With whom have you discussed the meeting to date? Did you tell Mr. Ickes that you raised his name at any point before it hit the media?

Secretary BABBITT. I did not.

Mr. SOUDER. Did you discuss it with White House Counsel prior to coming here today?

Secretary BABBITT. I'm sorry, I didn't hear the question.

Mr. SOUDER. In trying to sort out with whom you have discussed this matter. Obviously, the whole world, you discussed it to some degree at the hearings, but I'm wondering who you may have had particular discussions with regarding the Eckstein meeting. Did

you talk about it with White House Counsel? If so, when? Or Mr. Ickes, other political people at the White House?

Secretary BABBITT. I have discussed—I believe I probably discussed this with Erskine Bowles, the Chief of Staff.

Mr. SOUDER. When would that have been?

Secretary BABBITT. Probably when these proceedings began this past fall.

Mr. SOUDER. Did you have any discussions before you knew there was going to be Senate and House hearings about the meeting?

Secretary BABBITT. No, I don't believe so.

Mr. SOUDER. Did you believe Mr. Eckstein would just kind of drop it? You didn't realize that by saying something that explosive, it would potentially ricochet around?

Secretary BABBITT. I don't recall any discussions prior to this past fall as these issues came up. The contribution issue, for example, never was raised publicly until this past fall.

Mr. SOUDER. Could you describe briefly what you might have discussed with Erskine Bowles, Mr. Bowles?

Secretary BABBITT. Sure. I discussed very briefly my—it was a discussion in response to what appeared in the newspaper. I discussed the issue very briefly. He asked me whether I had ever spoken to Ickes, and I said, no, I have not. That's the last discussion I've had.

Mr. SOUDER. Did you ever discuss the McCain letter or your testimony as you have clarified and to some degree changed through that process, did you discuss with White House Counsel or anybody in Political Affairs?

Secretary BABBITT. I have not discussed, apart from the one meeting with Erskine Bowles—I'm just trying—I'm slowing down because I think it was right on the front end of this, and I certainly—I must have discussed the McCain letter. This was—my response to Senator McCain I probably discussed with him. And he asked me whether or not I had spoken to Ickes, I said no, and that was it.

Mr. SOUDER. Anybody else at the meeting?

Secretary BABBITT. I believe Mr. Ruff was at the meeting, White House Counsel.

Mr. SOUDER. And you are saying it was a short meeting? Was it like 5 minutes; 15 minutes?

Secretary BABBITT. Probably 5 minutes.

Mr. SOUDER. At the White House?

Secretary BABBITT. Yes.

Mr. SOUDER. I thank you for your testimony.

Do any other Members seek time? This would be the second round. Rather than saying we are having a second round, I just want to see if any other Members seek time. This would be in addition to your first 5 minutes. We have concluded the first round.

Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Secretary Babbitt, I know you ran for President, but my interest in you came when your name was mentioned for possible Supreme Court appointment, it was mentioned, and I know that in order for you to get to that point, I would have to agree with my Republican colleagues, Mr. Barr, who called you a very distinguished person,

and Mr. Hastert, who went to great lengths to talk about your distinguished career. For you to get to that point, that means that you have had a lifetime of credibility, not only as a lawyer. We who have never been considered for the Supreme Court or even mentioned have to admire people like you.

I think one of the things that concerns me in this process, as I sat here and I listened to your testimony, it pains me that this process that we are going through, I hope that it does not taint your career for the rest of your life, because that is real. We have one life to live, and this is no dress rehearsal. This is life. It pains me to think that there is a possibility that that might be the case.

But I want to go to what you did apparently do wrong, and I think Mr. Waxman was absolutely correct when he talked about no criminal activity here, but he talked about how you made, I think, a mistake, I really do. When Mr. Eckstein—and I understand that you all were buddies, is that right, good friends; am I right?

Secretary BABBITT. Certainly.

Mr. CUMMINGS. Yes, you were friends.

Can I take you back just for a moment to that day, because I have a feeling in listening to all of this that you might not be here if it were not for that one meeting. You might not. Was that an appointment that you had with Mr. Eckstein that day?

Secretary BABBITT. No, it was not.

Mr. CUMMINGS. Can you tell us what happened? How did he get to your office that day?

Secretary BABBITT. Well, he had been meeting—he had come to meet with John Duffy and the staff to make one final plea for his client. Sometime after that, he simply called my secretary and asked to come and see me. It was just that simple.

Mr. CUMMINGS. So you—and I guess if you were to go back, I don't want Mr. Waxman to be the person who describes how you felt about that day, but I guess if you could relive that moment, you would do things a little bit differently, wouldn't you?

Secretary BABBITT. I think I would, yes.

Mr. CUMMINGS. I am reading this book right now, Mr. Secretary. It is by Carson, this fellow Carson. It is entitled, "Don't Sweat the Small Stuff." One of the things that it says in that book is that it is very important to be able to admit your mistakes and to admit them and move on. The mistake that you made here does not call—and I agree with Mr. Waxman—does not call for an independent counsel. You were apparently trying to get a friend out of the office, trying to keep some distance in all of this decisionmaking process because your buddy was in the office.

You know, it frightens me that in our Nation today there seems to be an effort at destroying people. That really does bother me. It really does. I am hoping that we can get beyond that, because I think you did make a mistake, I think you have admitted to that mistake, and I think you are sorry for the mistake you did make; am I right?

Secretary BABBITT. Yes.

Mr. CUMMINGS. Let me go on to another thing that is very interesting. The other side seems to be concerned about you using the word "conspiracy." But if you think about why we are here today, this seems to be what it is all about or we wouldn't be here. The

thing that I guess bothers me is that we have to discount the testimony of the people who testified before us last week, career employees, in order for there to be a conspiracy.

You see, Mr. Secretary, there is a disconnect here. The disconnect comes where—we can look at all the circumstantial evidence we want to look at, but the disconnect comes when we have those folks like Mr. Skibine and the other ones that testified last week that clearly stated that they were insulted that anyone would even think and let alone say that they had been improperly influenced in this process. So we have to basically disregard all of their testimony and have to almost conclude that they are not telling the truth. And that bothers me, because I have—I practiced law for 20 years, and I sat here and I listened to them carefully, and I feel and I believe very strongly that they are good people, just as you are a great man.

I am just hoping that this process does not go to a point where an independent counsel is called for, because I think such a thing would be overshooting, and we would be going much too far. I think it is clear that, as Mrs. Maloney said, that if you had done anything else, you would have been in big trouble; big, big trouble. And so I want to thank you for your service. I appreciate it. Thank you very much.

Mr. BURTON [presiding]. The gentleman's time has expired.

Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman.

Mr. Secretary, I, too, want to thank you for your service. I suppose I want to begin this round of questioning by simply making it very clear for the record that your service as Governor of Arizona was a distinguished one, and that while we may have disagreed on many occasions on philosophical issues, your tenure was characterized by nothing but the highest of integrity and honesty. I believe that to be true of your entire public service career.

I want to turn to a small point first and hopefully clarify it. The decision in this case to deny trust status was not based on the fact that the Governor opposed trust status or opposed the gambling permit, was it?

Secretary BABBITT. The fact that the Governor opposed it, I think, was not a significant factor. I think we considered his opposition as equivalent to that of other elected officials.

Mr. SHADEGG. It is not cited in the letter?

Secretary BABBITT. That's correct. Because that really is step 2, and I don't think that it is particularly good decisionmaking to anticipate how the Governor might use his, shall we call it, veto power.

Mr. SHADEGG. In this case you really didn't get to step 2, you turned it down based, in the final version, on both IGRA and your own discretion, and those were the reasons you didn't get to the question of does the Governor oppose it or doesn't he, correct?

Secretary BABBITT. Except to the extent that he's an elected official voicing an opinion, but not in terms of his veto power, no.

Mr. SHADEGG. This decision was based on reasoning, right, not just the fact that the Governor opposed it; it was a reasoned decision, IGRA stops this, and in your opinion discretion also stops it, right?

Secretary BABBITT. Yes.

Mr. SHADEGG. OK. My only point, it is a small one, and I would like to move on to some other comments, but earlier this morning you were asked about comments that this decision lacked reasoning and was only three pages long where earlier decisions had been 29 pages long. You cited Secretary Lujan's decision in a prior case, and your counsel pulled out of a notebook very quickly, literally ripped it out, a one-page decision dated January 23, 1992, by Secretary Lujan turning down a licensing request and said, well, here is an example of where it got turned down in one page.

I simply want to make the point, and your counsel has that letter, and you had it with you, this decision was based on one ground and one ground only. There is no reasoning. That ground is the Governor of the State opposed it. And IGRA specifically says that you may only grant it if the Governor agrees. And when the Governor doesn't agree, there is no reasoning, you must turn it down. So the two are quite different. One requires reasoning, one requires simply the fact that the Governor opposed it; isn't that correct?

Secretary BABBITT. No, I don't think this was ever sent to the Governor for concurrence.

Mr. SHADEGG. I will read you a sentence from the letter.

Secretary BABBITT. The Governor of Iowa has stated there is strong opposition, yes.

Mr. SHADEGG. Let me just read you the sentence out of the letter. In addition—this is the third paragraph of the letter, last sentence: "In addition, the National Indian Gaming Regulatory Act requires the concurrence of the Governor of Iowa for any such acquisition, and, as already noted, the Governor opposes the acquisition."

I think that ends the inquiry. So I don't think the two are comparable. Having just made that point, I think one is reasoning, one is just a fact?

Secretary BABBITT. I would make this point in response. He points out in paragraph 2, it says, the affected communities have stated their strong opposition to the project.

Mr. SHADEGG. But we really didn't base it on that. Here he says——

Secretary BABBITT. I believe he did.

Mr. SHADEGG. No, he says—the law says if the Governor opposes it, then we can't grant it, and that's the reason he gives. There is no reasoning involved.

Secretary BABBITT. I don't agree with that. He says, I have decided to deny the request.

Mr. SHADEGG. Having cited the—the law does say if the Governor opposes it, you have to turn it down; do you agree with me on that?

Secretary BABBITT. No.

Mr. SHADEGG. You don't agree with what the law says?

Secretary BABBITT. The law clearly says, in my judgment, that once the Department makes a decision, then the Governor has the right to——

Mr. SHADEGG. I will read you United States Code, title 25, section 2719(b)(1)(a). The entire sentence I won't read, but it says, the Secretary may approve, but only if the Governor of the State in

which the gaming activity is to be conducted, in the Secretary's determination—you may only approve it if he agrees.

Secretary BABBITT. Congressman, I disagree with that. I think that that says that the Secretary determines, and the Governor then either concurs or does not concur.

Mr. SHADEGG. And if the Governor does not concur, then it must be denied.

Secretary BABBITT. The Secretary must make a determination and send it to the Governor. And the Governor then, as I said earlier, has, after that fact, a separate power that's equivalent to a veto power.

Mr. SHADEGG. I think the sentence says differently, but we will leave it at that.

My time is running out. Let me simply state, I indicated earlier that I was very troubled by Mr. Ickes' conduct in this particular instance. We have had now just a new reference to a whole issue of conspiracy, ending the notion that we ought not to have an independent counsel here based on conspiracy. We also had the ranking minority member simply describe the conduct in your office as clumsy behavior.

I am deeply troubled by a second aspect of this case. I have known you for over 20 years. I have respected you for over 20 years and still do. But I have also known Paul Eckstein for over 20 years and worked extensively with him as well and have respected him as well. There is a very, very, very troubling conflict between his statement of what occurred in the meeting in your office and your statement that you cannot in any way recollect it. Regrettably, I think that is a part of the record, and I think it does, between Mr. Ickes' conduct and Mr. Eckstein's allegation, create a circumstance in which I hope we can through some process ultimately find a resolution.

My time has expired.

Mr. BURTON. The gentleman's time has expired.

My good friend Mr. Kanjorski.

Mr. KANJORSKI. Thank you, Mr. Chairman.

Mr. Chairman, when we all use the word "conspiracy," it is with the idea that we lose our proportions because we are able to take threads unrelated sometimes and weave them together to make them appear something other than what they are.

In taking these few minutes, I just wanted to call together that a lot has been made of a fund-raising dinner held on July 13, 1995. It closely coincided with the decisionmaking process. And then my friends on your side of the aisle have said, ah, see, obviously this fund-raiser raising $440,000 by Mr. Schneider, partner in one of the largest lobbying organizations in Washington, did something wrong here directly related to this decision. To the average American out there watching this program, they may say, gee, those dates are awfully coincidental, maybe there is some smoke there, maybe there is something wrong.

Except, Mr. Chairman, you and I and the members of this committee should know that a fund-raiser held in Washington, DC, for $1,000 a head, having the President of the United States and his wife there, is not something that our gang commonly gets together and says, let's have a party. It takes months of planning, months

of reservation of time. No possibility that anybody putting that fund-raiser together would ever imagine that the Department the day before or the day after would be arriving at this decision. And yet it looks like a conspiracy to the untrained mind and to the untrained eye.

Further, that wasn't Indian money. That was $1,000 hard money by 350, 400 people from the Washington, DC, area invited to a very successful lobby of its own. Was that wrong? No. Is it legal? Yes. Did it cause any problems? Only in the minds of those people who want to see some conspiracy or some connection.

Then we have this troubling testimony of Mr. Eckstein. I agree with the gentleman from Arizona. I know he is quite a lobbyist and recognized person in town, but I find it incredible that he is that clairvoyant, that he knows the Indians over the next 18 months are going to contribute $356,000, and he is able to miss that mark by $150,000 by the Secretary apparently seizing on it.

I think I know what happened. I think Mr. Eckstein heard about ultimately these contributions over the next 18 months from the decision, and for some reason that confusion jumped in his mind, and maybe through other conversations he had, he jumped to the conclusion that maybe that was said at the meeting. I doubt whether it could be said. But if I have to make my bets, I don't think they hold that secret for 2 years.

Finally, it comes down to something Mr. Waxman said. We are not arguing here about poor Indians and rich Indians and somebody had been done wrong. There is nobody on this committee and nobody that I have ever read about that didn't say this is the right decision, that this Cabinet officer or this Department resolved this decision the way it should have been made. And we are out here trying to fry him, his integrity, and his professionalism and his independence because he made the right decision because we feel so sorry for, what was it, that doggy track in Wisconsin owned by these very wealthy Floridian gaming people that were wronged? Why were they here? To make millions and millions and millions and millions of dollars in casino gambling that they otherwise could not have made except for the provision of the Indian law that allow Indians to get some benefit, and they tried to misuse and abuse that.

First they got one Indian tribe and went with it, and they turned them down and didn't like it. Mr. Havenick said he didn't like their integrity. So he changed. The new Indians come in, you can't fault them. Found money, any opportunity was worth their while, they went in. But who was the gainer? The guy with the dead dog track, losing millions every year, was he at a disadvantage? No. He hired Eckstein, the best lawyers, the best lobbyists. By God, if it had been money, you can bet your life the contributions would have been on his side. He certainly did not have the money to do it. He spent millions up to that point and millions since on appeals and otherwise. We saw four or five powerful lawyers themselves sit in this room. He ran up legal bills in this room today or in the 4 days here over $50- or $100,000. He is not a poor man. He would have used his money. This was a tough decision. The decision was made right, and there was a loser.

One other thing. We have just gotten some communications today. Mr. Havenick cast aspersions on that Indian tribe that he didn't want to join with. He said he didn't like their management skills. As I understand, the National Indian Gaming Commission issued a press release, and it just said that they are going to close one of the casinos owned by Mr. Havenick because of violation—I am sorry, not by Mr. Havenick, but by one of the tribes who were petitioners here because of their violation of regulations in the gaming ordinance.

[The information referred to follows:]

NATIONAL
INDIAN
GAMING
COMMISSION

FOR IMMEDIATE RELEASE

CONTACT: Charlotte Hrncir

202 632-7003

NIGC ORDERS
WISCONSIN TRIBE TO CLOSE CASINOS

JANUARY 29, 1998 -- Washington, D.C. -- The National Indian Gaming Commission (NIGC) today issued a Notice of Violation to the Sokaogon Chippewa Community Mole Lake Band of Crandon, WI regarding its gambling operations -- the Regency Resort Casino, the Grand Royale Casino and the Mole Lake Casino. The Notice included instructions to "cease and desist operating" the casinos "until these gaming operations are in full compliance with the NIGC's regulations and the Tribe's gaming ordinance."

During the summer of 1997, Arlyn Ackley, Chairman of the Tribe, executed a "Compliance Agreement" between the Tribe and the NIGC that was intended to address issues in a dispute between tribal groups which had led to a takeover of the Tribal offices and the closure of the Regency Resort Casino in May 1997. To date, the Tribe has not honored the commitments in the agreement and has not come into compliance with the request's of the Wisconsin Gaming Board. According to Tom Foley, Vice Chairman of the NIGC, "The nature of the violations in this case is so egregious that a closure order is necessary to protect the integrity of the gaming operation."

The Notice of Violation includes three citations for violations of the Indian Gaming Regulatory Act (IGRA), NIGC regulations and the Tribal ordinance. Those citations are for:

- failure to correct the violations listed in a Notice of Violation issued to the Tribe on October 30, 1997 for failure to submit annual gaming operation audits to the NIGC for the fiscal years 1993, 1994, 1995 and 1996;
- failure to forward background reports, suitability determination reports on key employees and applications to the NIGC reflecting the results of background investigations; and
- failure to submit quarterly statements of class II gaming revenue and pay quarterly fees since 1994. The tribe did submit a lump sum payment in June 1997 but did not indicate what period the payment covered or provide the required statements.

-- more --

These citations are substantial violations of the NIGC's regulations that resulted in the issuance of an Order of Temporary Closure. "It is our hope that the Tribe will come into full compliance," said Vice Chairman Foley. "The corrective measures must be accomplished immediately," he stated.

According to the Vice Chairman, "Failure to address these violations may result in the permanent closure of the casinos and in the assessment of civil fines not to exceed $25,000 per violation per day." The Tribe has the right to submit information to be used in determining the amount of the civil fine and has the right to appeal the Notice of Violation within thirty days.

The NIGC was created by the Indian Gaming Regulatory Act of 1988 and is responsible for monitoring gaming in 276 enterprises operated by 186 tribes in 28 states. It has the authority to take actions against violations of the Indian Gaming Regulatory Act, the Commission's regulations, and violations of tribal ordinances which are approved by the Commission.

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Mr. KANJORKSI. Maybe in the end how funny it will be that this Department and these staff people made the right decision, and we as the Congress, in order to find something wrong politically and in campaign finance and in connecting all these disparate threads to create a conspiracy, there isn't any. They did the right thing at the right time for the right purpose under the rules and under the merits.

I think we should say, Mr. Secretary, if this should cost you your consideration for the Supreme Court after your distinguished career, that is grossly unfortunate. I don't think in the end it will.

Mr. BURTON. The gentleman's time has expired.

Mr. Barr, you will be our final questioner.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Chairman, just for the record, earlier today we referred to a document, a copy of a notation from President Clinton to Mr. Panetta, inquiring about the status of the Wisconsin tribe Indian dispute. A reference was made when I discussed that, and that was introduced into the record about the White House seeking to preclude and stop its publication, to keep that document from the public. It was indeed 1 of the 10 documents listed on a privileged log submitted to us in October 1997, exhibit 150–2, item number 6. So that is in the record, and I want to make very clear today that that is the case.

Mr. Secretary, I would like to go back briefly to your discussions that we referenced shortly ago with Mr. Bowles and Mr. Ruff, White House Counsel, about the statements by Mr. Eckstein. What exactly did you discuss with them, and when was that discussion or those discussions?

Secretary BABBITT. Yes. I met just, I would guess—the date would obviously be available. I think it was sometime in October. It was probably a 5-minute meeting.

Mr. BARR. Would that be made before October 10, before your letter?

Secretary BABBITT. I don't——

Mr. BARR. You submitted a letter to Senator Thompson on the 10th.

Secretary BABBITT. OK. It was after I wrote the Thompson letter.

Mr. BARR. After?

Secretary BABBITT. Yes.

Mr. BARR. So you had no discussions whatsoever with them about that letter?

Secretary BABBITT. That's correct. It had already been written.

Mr. BARR. What was the nature of your discussions with them?

Secretary BABBITT. This matter had come up in the press, and they were—Mr. Bowles was interested in what the dispute was about. I described the letters very briefly. He asked—I explained that I had never spoken to Ickes. That was the White House issue that he was interested in, and I said, no, I had never spoken to Mr. Ickes. He suggested to me that I should talk to Senator McCain, and that was about it.

Mr. BARR. But you are very clear in your mind that you had no meetings with Mr.—no discussions at all with Mr. Bowles or Mr. Ruff before your October 10, 1997, letter to Senator Thompson?

Secretary BABBITT. I'm quite clear about that.

Mr. BARR. OK. Did you have any e-mails or written conversations with him?

Secretary BABBITT. I'm certain I did not.

Mr. BARR. Was there anyone outside of your immediate office that assisted with the preparation of the October 10 letter to Senator Thompson?

Secretary BABBITT. The letter to Senator Thompson, outside my immediate office, no, sir.

Mr. BARR. With regard to the other letter that I think we have discussed and that is also in the record, and that is the August 30, 1996, letter to Senator McCain, did you have any discussions or receive any assistance from anybody at the White House in the preparation of that letter?

Secretary BABBITT. No, I did not.

Mr. BARR. Thank you.

Thank you, Mr. Chairman.

Mr. BURTON. The gentleman yields back the balance of his time.

Regarding the issue of privilege mentioned earlier, I will enter letters between the committee and the White House and a 36-page CRS opinion in this matter into the record without objection.

[The information referred to follows:]

DAN BURTON, INDIANA
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MINORITY MEMBER

ONE HUNDRED FIFTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143
(202) 225-5074

December 16, 1997

By Facsimile: (202) 456-7931

Lanny A. Breuer, Esq.
Special Counsel to the President
The White House
Washington, D.C. 20500

Re: Hudson Dog Track Related Documents Subject to Executive Privilege

Dear Mr. Breuer:

I have received your letter dated December 9 regarding my decision to recommend to the Chairman that the Committee be able to use the documents listed on your privilege log at a hearing. Your response to the 36-page CRS memorandum was lacking, to use your term. Given your office's track record on this issue, I am not persuaded by your unsupported conclusion. Unless you can support your claim of privilege with a convincing legal argument, I will consider this matter closed.

Also, I am not aware of any agreement that we made that would limit the Committee from relying on staff of the Congressional Research Service (CRS). The Committee's document protocol allows us to seek the advice of CRS attorneys. Furthermore, you may be assured that the documents in question were treated with the utmost care by the professional staff of CRS.

Furthermore, I am not aware of any agreement regarding the public release of the documents. Chairman Burton agreed on November 5 not to release the documents at the Committee's November 6 hearing pending further discussions. We have met, conducted legal analysis, and now have come to a conclusion regarding these documents. We have met our responsibility under our agreement. You should know that members of the Committee, in order to fulfill their oversight responsibilities, may decide that it is in the public interest to use or refer to the documents in a public hearing. The Committee staff never entered into an agreement with you, either implicitly or explicitly, which would limit any member of the Committee from exercising their constitutional prerogative.

You make clear in your letter that any release of the documents "in no way compromises our claims of privilege in connection with [the civil litigation in Wisconsin]." I presume that you concur in that part of the CRS opinion which concluded that "the White House has not, by their production, waived any assertable privileges it might raise in a court action even if the Committee should publicly disclose the material during the course of its proceedings." I assume that this part of the opinion was not "lacking."

Regarding an issue about depositions, the Committee adopted a unanimous consent request on November 6 to make your deposition and the depositions of Michael Imbroscio, Cheryl Mills, Dimitri Nionakis, Jack Quinn, Steven Smith, Colonel Joseph Simmons, and Alan Sullivan part of the record after you had an opportunity to review them. The Committee is about to print the November 6 hearing record and would appreciate receiving any redactions you may have regarding these depositions. If you don't make any suggestions by 5 p.m. Thursday, December 18, 1997, I will instruct the Chief Clerk to direct the Government Printing Office to print the hearing.

If you have any questions, please feel free to call me.

Sincerely,

Richard D. Bennett
Chief Counsel

cc: Ken Ballen, Esq.
Chief Minority Investigative Counsel

THE WHITE HOUSE
WASHINGTON

December 9, 1997

BY FACSIMILE AND U.S. MAIL

Richard Bennett
Chief Counsel
Committee on Government Reform and Oversight
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Dick:

I was disappointed to learn from you yesterday evening that you have recommended to Chairman Burton that the Committee publicly disclose the privileged Hudson casino materials. I was optimistic that we would reach a mutually agreeable accommodation on this issue.

You apparently based your decision on the 36-page CRS memorandum that you sent to us late last Saturday and gave us only 48 hours in which to analyze and discuss. As I indicated yesterday, we consider this issue important and needed more time in which to respond in a meaningful manner. Unfortunately, you refused our request.

We have reviewed the opinion and, in short, find it lacking. It is both factually inaccurate and fundamentally flawed in its legal analysis. We thus maintain our position that these documents are subject to privilege and that you have not articulated a showing of need that would satisfy your burden under governing legal principles.

Equally problematic, however, is the context in which this memorandum was prepared. At no time have you apprised us of your desire to share these privileged materials outside of the Committee. We believe that the disclosure of these documents to individuals outside the Committee and unrelated to its investigation is a breach of our agreement.

As stated even in the CRS memorandum, our respective branches have a constitutional obligation to reach mutually agreeable accommodations on these issues. Indeed, the judiciary recognizes this duty and, for that reason, resists intervention and instead encourages the executive and legislative branches to reach a resolution independently through open dialogue. Unfortunately, this important objective has apparently been superseded by the Committee's unilateral decision.

The public release of these documents will constitute a further breach of our agreement. It will also inevitably undermine the process by which the parties to the Wisconsin litigation are seeking judicial resolution of the very claims the Committee has now rejected. We want to make clear, therefore, that we oppose the Committee's release of the documents and that their release in no way compromises our claims of privilege in connection with that litigation. Nonetheless, the public will learn, despite repeated characterizations to the contrary, that there are no facts contained in these documents that are relevant to the issue of whether there was any improper political influence surrounding the Department of the Interior's decision and none reveals any misconduct or even potential misconduct by the Administration or agency officials.

We had expected that the Committee would honor this agreement. We hope that you will reconsider your recommendation.

If you have any questions, please call me.

Sincerely yours,

Lanny A. Breuer
Special Counsel to the President

cc: Ken Ballen, Esq.

DAN BURTON, INDIANA
CHAIRMAN

ONE HUNDRED FIFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143
(202) 225–5074

December 6, 1997

By Facsimile: (202) 456-7931

Mr. Lanny Breuer, Esq.
Special Counsel to the President
The White House
Washington, D.C. 20500

Re: Hudson Dog Track Related Documents Subject to Executive Privilege

Dear Mr. Breuer:

As promised, enclosed is a copy of the Congressional Research Service's memorandum outlining the reasons why the documents listed on an October 21, 1997 White House privilege log are not subject to either the attorney-client, work product, or executive privilege. Unless I hear from you by close of business Monday, December 8, I will recommend to the Chairman that the documents listed on the privilege log be used in an open session of the Committee.

I appreciate your attention to this matter and look forward to discussing this with you soon.

Sincerely,

Richard D. Bennett

Richard D. Bennett
Chief Counsel

Enclosure

Congressional Research Service • The Library of Congress • Washington, D.C. 20540-7000

December 3, 1997

TO : Honorable Dan Burton, Chairman, House Committee on Government Reform and Oversight

FROM : American Law Division

SUBJECT : Substantiality of White House Claims of Executive, Attorney-Client and Work Product Privilege for Documents Relating To The Hudson Dog Track Matter

You have asked that we review and comment upon the legal substantiality of tentative claims of executive, attorney-client, and work product privilege by the White House with respect to documents relating to the Hudson Dog Track matter that are presently in the Committee's possession. The White House has requested confidential treatment of the documents, which were turned over to the Committee in compliance with a subpoena, on the ground, among others, that Committee publication could result in waiver of the asserted privileges in pending or future court actions. You have provided us with copies of all but one of the documents listed in an accompanying privilege log.[1] The privilege log indicates the date of the document (in most instances), a brief description of the nature of each document, and the privilege or privileges claimed for each one.

We will proceed by first summarizing and explaining the current law and practice with respect to each of the privileges when asserted before courts and congressional committees, and then apply the pertinent legal principles to the particular documents. We conclude that under the current state of the law, and in light of the nature of the documents and the circumstances under which they were produced, it is likely that a reviewing court would hold that none of the privileges claimed are sustainable before your Committee, but that the White House has not, by their production, waived any assertable privileges it might raise in a court action even if the Committee should publically disclose the material during the course of its proceedings.

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[1]Not included is document number EOP 64985, dated May 25, 1995, described as an "E-mail from the Deputy Assistant to the President for Intergovernmental Affairs to Special Assistant to the Deputy Chief of Staff for Policy and Political Affairs the attendance of possible presidential appointee at political event", for which executive privilege is claimed.

EXECUTIVE PRIVILEGE

Presidential claims of a right to preserve the confidentiality of information and documents in the face of legislative demands have figured prominently, though intermittently, in executive-congressional relations since at least 1792, when President Washington discussed with his cabinet how to respond to a congressional inquiry into the military debacle that befell General St. Clair's expedition. *See* Archibald Cox, *Executive Privilege*, 122 U. of Pa. L. Rev. 1383, 1395-1405 (1979). *See generally*, Mark J. Rozelle, Executive Privilege: The Dilemma of Secrecy and Democratic Accountability (1994)(Rozelle). Few such interbranch disputes over access to information have reached the courts for substantive resolution, the vast majority achieving resolution through political negotiation and accommodation. *See*, Neil Devins, *Congressional-Executive Information Access Disputes: A Modest Proposal-Do Nothing*, 48 Adm. L.Rev. 109 (1996). In fact, it was not until the Watergate-related lawsuits in the 1970's seeking access to President Nixon's tapes that the existence of a presidential confidentiality privilege was judicially established as a necessary derivative of the President's status in our constitutional scheme of separated powers. Of the six court decisions involving interbranch information access disputes,[3] three have involved Congress and the Executive[5] but only one of these resulted in a decision on the merits. One other case, involving legislation granting custody of President Nixon's presidential records to the Administrator of the General Services Administration, also determined several executive privilege issues pertinent to the instant dispute.[4]

The *Nixon* and post-Watergate cases established the broad contours of the presidential communications privilege. Under those precedents the privilege, which is constitutionally rooted, could be invoked by the President when asked to produce documents or other materials or information that reflect presidential decisionmaking and deliberations that he believes should remain confidential. If the President does so, the materials become presumptively privileged. The privilege, however, is qualified, not absolute, and can be overcome by an adequate showing of need. Finally, while reviewing courts have expressed reluctance to balance executive privilege claims against a congressional demand for information, they have acknowledged they will do so if the political branches have tried in good faith but failed to reach an accommodation.

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[3]*United States v. Nixon*, 418 U.S. 683 (1974); *Nixon v. Sirica*, 487 F.2d 700 (D.C. Cir. 1973); *Senate Select Committee v. Nixon*, 498 F.2d 725 (D.C. Cir 1974); *United States v. AT&T*, 551 F.2d 384 (D.C. Cir. 1976), *appeal after remand*, 567 F.2d 121 (D.C. Cir. 1977); *United States v. House of Representatives*, 556 F.Supp. 150 (D.D.C. 1983); *In re Sealed Case*, 116 F.3d 550 (D.C. Cir.), *reissued in unredacted form*, 121 F.3d 729 (D.C. Cir. 1997).

[5]Senate Select Committee, *supra; United States v. House of Representatives, supra;* and *United States v. AT&T, supra.*

[4]*Nixon v. Administrator of General Services*, 433 U.S. 425 (1977).

However, until the District of Columbia Circuit's recent ruling in *In re Sealed Case*, 116 F.3d 550 (D.C. Cir), *reissued in unredacted form*, 121 F.3d 729 (D.C. Cir. 1997), these judicial decisions had left important gaps in the law of presidential privilege which have increasingly become focal points, if not the source, of interbranch confrontations that has made their resolution more difficult. Among the more significant issues left open included whether the President has to have actually seen or been familiar with the disputed matter; whether the presidential privilege encompasses documents and information developed by, or in the possession of, officers and employees in the departments and agencies of the Executive Branch; whether the privilege encompasses all communications with respect to which the President may be interested or is it confined to presidential decisionmaking and, if so, is it limited to any particular type of presidential decisionmaking; and what kind of demonstration of need must be shown to justify release of materials that qualify for the privilege. The unanimous panel in *In re Sealed Case* authoritatively addressed each of these issues in a manner that appears to have drastically altered the future legal playing field in resolving such disputes. It is useful, then, before proceeding with a description and explication of *In re Sealed Case*, to review and understand the prior case law and how it has affected the positions of the disputants.

1. The Watergate Cases

In interbranch information disputes since the early 1980's, executive statements and positions taken in justification of assertions of executive privilege have frequently rested upon explanations of executive privilege made by the courts. To better understand the executive's stance in this area, and the potential impact on those positions of *In re Sealed Case*, we will chronologically examine the development of the judiciary's approach and describe how the executive has adapted the judicial explanations of the privilege to expand the scope of its supporting arguments.

In Nixon v. Sirica, 487 F.2d 750 (D.C. Cir. 1973), the first of the Watergate cases, a panel of the District of Columbia Circuit rejected President Nixon's claim that he was absolutely immune from all compulsory process whenever he asserted a formal claim of executive privilege, holding that while the presidential conversations are "presumptively privileged", 487 F.2d at 717, the presumption could be overcome by an appropriate showing of public need by the branch seeking access to the conversations. In *Sirica*, "a uniquely powerful", albeit undefined, showing was deemed to have been made by the Special Prosecutor that the tapes subpoenaed by the grand jury contained evidence necessary to carrying out the vital function of determining whether probable cause existed that those indicted had committed crimes. *Id.*

The D.C. Circuit next addressed the Senate Watergate Committee's effort to gain access to five presidential tapes in *Senate Select Committee on Presidential Campaign Activites v. Nixon*, 498 F.2d 725 (D.C. Cir. 1974).

The appeals court initially determined that "[t]he staged decisional structure established in *Nixon v. Sirica*" was applicable "with at least equal force here." 498 F.2d at 730-31. Thus in order to overcome the presumptive privilege and require the submission of materials for court review, a strong showing of need had to be established. The appeals court held that the Committee had not met its burden of showing that "the subpoenaed evidence is demonstrably critical to the responsible fulfillment of the Committee's function". *Id.* at 731. The court held that, in view of the initiation of impeachment proceedings by the House Judiciary Committee, the overlap of the investigative objectives of both committees, and the fact that the impeachment committee already had the tapes sought by the Senate Committee, "the Select Committee's immediate *oversight* need for the subpoenaed tapes is, from a congressional perspective, merely cumulative". *Id.* at 732 (emphasis supplied). Nor did the court feel that the Committee had shown that the subpoenaed materials were "critical to the performance of [its] *legislative functions*". *Id.* (emphasis supplied). The court could discern "no specific legislative decisions that cannot responsibly be made without access to materials uniquely contained in the tapes or without resolution of the ambiguities that the [presidentially released] transcripts may contain". *Id.* at 733. The court concluded that the subsequently initiated and nearly complete work of the House Judiciary Committee had preempted the Senate Committee. "More importantly,.., there is no indication that the findings of the House Committee on the Judiciary and, eventually the House of Representatives itself, are so likely to be inconclusive or long in coming that the Select Committee needs immediate access of its own". *Id.*

The D.C. Circuit's failure to explicitly acknowledge the full constitutional value of congressional oversight of executive branch activities in *Senate Select Committee* has been utilized by the Executive as the basis for arguing that the Congress's interest in executive information is less compelling when a committee's function is oversight than when it is considering specific legislative proposals.[5] This approach, however, arguably misreads the carefully circumscribed holding of the court's ruling, and would seem to construe too narrowly the plenary scope of Congress's investigatory powers which has been recognized since the founding of the republic and is firmly established by innumerable Supreme Court decisions.

The *Senate Select Committee* court's opinion took great pains to underline the unique and limiting nature of the case's factual and historical context. Thus it emphasized the overriding nature of the "events that have occurred since this litigation was begun and, indeed, since the District Court

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[5]The proposition has been a persistent characteristic of the statements of the Reagan, Bush and Clinton Administrations. See, *e.g.*, Letter from Attorney General William French Smith to President Reagan, October 31, 1981, *reprinted in* 5 Op. OLC 27, 30 (1981) (Smith Letter/Watt); Memorandum to General Counsels' Consultative Group Re: Congressional Requests for Confidential Executive Branch Information, 13 Op. OLC 185, 192 (1989)(Barr Memo); Letter from Attorney General Janet Reno to President Clinton, September 20, 1996, at 2-3 (Reno Letter/Haiti).

issued its decision". *Id.* at 731. These included the commencement of impeachment proceedings by the House Judiciary Committee, a committee with an "express constitutional source", whose "investigative objectives substantially overlap" those of the Senate Committee; that the House Committee was presently in possession of the very tapes sought by the Select Committee, making the Senate Committee's need for the tapes "from a congressional perspective, merely cumulative"; the lack of "evidence indicating that Congress itself attached any particular value to "having the presidential conversations scrutinized by two committees simultaneously"; that the necessity for the tapes in order to make "legislative judgments has been substantially undermined by subsequent events", including the public release of transcripts of the tapes by the President; the transfer of four of five of the original tapes to the district court; and the lack of any "indication that the findings of the House Committee on the Judiciary and, eventually, the House of Representatives itself, are so likely to be inconclusive or long in coming that the Select Committee needs immediate access of its own". *Id.* at 732-33. The appeals court concluded by reiterating the uniqueness of the case's facts and temporal circumstances: "We conclude that the need demonstrated by the Select Committee in the peculiar circumstances of this case, including the subsequent and on-going investigation of the House Judiciary Committee, is too attenuated and too tangential to its functions to permit a judicial judgment that the President is required to comply with the Committee's subpoena". *Id.* at 733. Thus the ruling is likely to be limited by future courts to its special historical facts and context.

The Executive's position also ignores the unassailable roots of Congress's broad investigatory powers that reach back to the establishment of the Constitution and which has been continually reaffirmed by the Supreme Court. As George Mason recognized at the Constitutional Convention, Congress "are not only Legislators but they possess inquisitorial power. They must meet frequently to inspect the Conduct of the public offices." 2 The Records of the Constitutional Convention of 1787, at 206 (Max Farrand, ed., 1966). Woodrow Wilson remarked:

> Quite as important as legislation is vigilant oversight of administration; and even more important than legislation is the instruction and guidance in political affairs which the people might receive from a body which kept all national concerns suffused in a broad daylight of discussion. . . . The informing functions of Congress should be preferred even to its legislative function. The argument is not only that discussed and interrogated administration is the only pure and efficient administration, but, more than that, that the only really self-governing people is that people which discusses and interrogates its administration.

Woodrow Wilson, Congressional Government 195, 198 (Meridian Books 1956)(1885). The Supreme Court has cited Wilson favorably on this point. See, *e.g.*, *Hutchinson v. Proxmire*, 443 U.S. 111, 132 (1979). Moreover, the Court has failed to make any distinction between Congress's right to executive branch information in pursuit of its oversight function and in support of its responsibility to enact, amend, and repeal laws. In fact, the Court has recognized that Congress's investigatory power "comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste." *Watkins v. United States*, 354 U.S. 173, 187 (1957). See also, *McGrain v. Daugherty*, 272 U.S. 135, 177 (1926); *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 504 n. 15(1975)

Two months after the ruling in *Senate Select Committee*, the Supreme Court issued its unanimous ruling in *United States v. Nixon*, 418 U.S. 683 (1974)(*Nixon* I), which involved a judicial trial subpoena to the President at the request of the Watergate Special Prosecutor for tape recordings and documents relating to the President's conversations with close aides and advisors. For the first time, the Court found a constitutional basis for the doctrine of executive privilege in "the supremacy of each branch within its own assigned area of constitutional duties" and in the separation of powers. 418 U.S. 705, 706. *See also, id.* at 708, 711. But although it considered presidential communications with his close advisors to be "presumptively privileged", the Court rejected the President's contention that the privilege was absolute, precluding judicial review whenever it is asserted. *Id.* at 705, 706, 708. Also, while acknowledging the need for confidentiality of high level communications in the exercise of Article II powers, the Court stated that when the privilege depends solely on the broad, undifferentiated claim of public interest in the confidentiality of such communications," a confrontation with other values arises". *Id.* at 706. It held that "absent a need to protect military, diplomatic, or sensitive national security secrets, we find it difficult to accept the argument that even the very important interest in confidentiality of presidential communications is significantly diminished by production of" materials that are essential to the enforcement of criminal statutes. *Id.*

Having concluded that the claim of privilege was qualified, the Court resolved the "competing interests" -- the President's need for confidentiality vs. the judiciary's need for materials in a criminal proceeding -- "in a manner that preserves the essential functions of each branch", *id.* at 707, holding that the judicial need for the tapes" shown by a demonstrated, specific need for evidence in a pending criminal trial" outweighed the President's "generalized interest in confidentiality . . .". *Id.* at 713. The Court was careful, however, to limit the scope of its decision, noting that "we are not here concerned with the balance between the President's generalized interest in confidentiality . . . and congressional demands for information". *Id.* at 712 n. 19.

In the last of the *Nixon* cases, *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977)(*Nixon* II), the Supreme Court again balanced competing interests in President Nixon's White House records. The Presidential Recordings and Materials Preservation Act granted custody of President Nixon's

presidential records to the Administrator of the General Services Administration who would screen them for personal and private materials, which would be returned to Mr. Nixon, but preserve the rest for historical and governmental objectives. The Court rejected Mr. Nixon's challenge to the Act, which included an argument based on the "presidential privilege of confidentiality". *Id.* at 439. Although *Nixon* II did not involve an executive response to a congressional probe, several points emerge from the Court's discussion that bear upon Congress's interest in confidential executive branch information. First, the Court reiterated that the executive privilege it had announced in *Nixon* I was not absolute, but qualified. *Id.* at 446. Second, the Court stressed the narrow scope of that privilege. "In [*Nixon* I] the Court held that the privilege is limited to communications 'in performance of [a President's] responsibilities' . . . 'of his office' . . . and made in the process of shaping policies and making decisions.'" *Id.* at 449 (citations omitted). Third, the Court found that there was a "substantial public interest[]" in preserving these materials so that Congress, pursuant to its "broad investigative power," could examine them to understand the events that led to President Nixon's resignation" in order to gauge the necessity for remedial legislation". *Id.* at 453.

2. Post-Watergate Cases

Two post-Watergate cases, both involving congressional demands for access to executive information, demonstrate both the judicial reluctance to involve itself in the essentially political confrontations such disputes represent but also the willingness to intervene where the political process appears to be failing.

In *United States v. AT&T*, 567 F.2d 121 (D.C. Cir. 1977), the D.C. Circuit was unwilling to balance executive privilege claims against a congressional demand for information unless and until the political branches had tried in good faith but failed to reach an accommodation.[6] In that case, the Ford Justice Department had sought to enjoin AT&T's compliance with a subpoena issued by a House subcommittee. The subcommittee was seeking FBI letters requesting AT&T's assistance with warrantless wiretaps on U.S. citizens allegedly made for national security purposes. The Justice Department argued that the executive branch was entitled to sole control over the information because of "its obligation to safeguard the national security". *Id.* at 127 n.17. The House of Representatives, as intervenor, argued that its rights to the information flowed from its constitutionally-implied power to investigate whether there had been abuses of the wiretapping power. The House also argued that the court had no jurisdiction over the dispute because of the Speech or Debate Clause.

The court rejected the "conflicting claims of the [Executive and the Congress] to absolute authority". *Id.* at 128. With regard to the executive's

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[6] This was the second time the case was before the court. After its initial review it was remanded to the district court to allow the parties further opportunity to negotiate an accommodation. *See* 551 F.2d 384 (D.C. Cir. 1976).

claim, the court noted that there was no absolute claim of executive privilege against Congress even in the area of national security.

> The executive would have it that the Constitution confers on the executive absolute discretion in the area of national security. This does not stand up. While the Constitution assigns to the President a number of powers relating to national security, including the function of commander in chief and the power to make treaties and appoint Ambassadors, it confers upon Congress other powers equally inseparable from the national security, such as the powers to declare war, raise and support armed forces and, in the case of the Senate, consent to treaties and the appointment of ambassadors.

Id. at 128. Likewise, the court rejected the congressional claim that the Speech or Debate Clause was "intended to immunize congressional investigatory actions from judicial review. Congress' investigatory power is not, itself, absolute". *Id.* at 129.

According to the court, judicial intervention in executive privilege disputes between the political branches is improper unless there has been a good faith but unsuccessful effort at compromise. *Id.* at 127-28. There is in the Constitution, the court held, a duty that the executive and Congress attempt to accommodate the needs of each other:

> The framers, rather than attempting to define and allocate all governmental power in minute detail, relied, we believe, on the expectation that where conflicts in scope of authority arose between the coordinate branches, a spirit of dynamic compromise would promote resolution of the dispute in the manner most likely to result in efficient and effective functioning of our governmental system. Under this view, the coordinate branches do not exist in an exclusively adversary relationship to one another when a conflict in authority arises. Rather, each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation.

Id. at 127 (footnote omitted). The court refused to resolve the dispute because the executive and the Congress had not yet made that constitutionally-mandated effort at accommodation. Instead, the court "encouraged negotiations in order to avoid the problems inherent in [the judiciary] formulating and applying standards for measuring the relative needs of the [executive and legislative branches]". *Id.* at 130. The court suggested, however, that it would resolve the dispute if the political branches failed to reach an accommodation. *Id.* at 123, 126. The court-encouraged negotiations ultimately led to a compromise. Subcommittee staff was allowed to review some unedited memoranda describing the warrantless wiretaps and report orally to subcommittee members. The Justice Department retained custody of the documents. *Id.* at 131-32.

The federal district court in the District of Columbia displayed the same reluctance to intervene in an executive privilege dispute with Congress in *United States v. House of Representatives*, 556 F.Supp. 150 (D.D.C. 1983). There the court dismissed a suit brought by the Justice Department seeking a declaratory judgment that the Administrator of the Environmental Protection Agency (EPA) "acted lawfully in refusing to release certain documents to a congressional subcommittee" at the direction of the President. *Id.* at 151. The Administrator based her refusal upon President Reagan's invocation of executive privilege against a House committee probing the EPA's enforcement of hazardous waste laws. The court dismissed the case, without reaching the executive privilege claim, on the ground that judicial intervention in a dispute "concerning the respective powers of the Legislative and Executive Branches . . . should be delayed until all possibilities for settlement have been exhausted". *Id.* at 152. "Compromise and cooperation, rather than confrontation, should be the aim of the parties". *Id.* at 153. As the Court of Appeals had done in *United States v. AT&T*, the district court in *United States v. House of Representatives* encouraged the political branches to settle their dispute rather than invite judicial intervention. Only if the parties could not agree, would the court intervene and resolve the interbranch dispute. *Id.* at 152. Ultimately the branches did reach an agreement and the court did not need to balance executive and congressional interests. *See* Devins, *supra*, at 118-120.

3. Executive Branch Positions On The Scope of Executive Privilege

Not surprisingly, the executive branch has developed an expansive view of executive privilege in congressional investigations, taking maximum advantage of the vague and essentially undefined terrain within the judicially recognized contours of the privilege. Thus executive branch statements have identified four areas that are asserted to be presumptively covered by executive privilege: foreign relation and military affairs, two separate topics that are sometimes lumped together as "state secrets", law enforcement investigations, and confidential information that reveals the executive's "deliberative process" with respect to policymaking. Typically, the executive has asserted executive privilege based upon a combination of the deliberative process exemption and one or more of the other categories. As a consequence, much of the controversy

surrounding invocation of executive privilege has centered on the scope of the deliberative process exemption. The executive has argued that at its core this category protects confidential predecisional deliberative material.[7] Justifications for this exemption often draw upon the language in *United States v. Nixon* that identifies a constitutional value in the President receiving candid advice from his subordinates and awareness that any expectation of subsequent disclosure might temper needed candor.[8] The result has been a presumption by the executive that its predecisional deliberations are beyond the scope of congressional oversight. "Congress will have a legitimate need to know the preliminary positions taken by Executive Branch officials during internal deliberations only in the rarest of circumstances".[9] According to this view, the need for the executive to prevent disclosure of its deliberations is at its apex when Congress attempts to discover information about ongoing policymaking within the executive branch. In that case, the executive has argued, the deliberative process exemption serves as an important boundary marking the separation of powers. When congressional oversight "is used as a means of participating directly in an ongoing process of decisionmaking within the Executive Branch, it oversteps the bounds of the proper legislative function".[10]

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[7]See Smith letter, *supra* note 5, 5 Op. OLC at 28-31; Barr Memo, *supra* n.5, 13 Op. OLC at 187-190.

[8]See, *e.g.*, 418 U.S. at 705. See also, Smith Letter, *supra*, note 5, 5 Op. OLC at 29; Memorandum for All Executive Department and Agency General Counsel's Re: Congressional Requests to Departments and Agencies Protected By Executive Privilege, September 28, 1994, at 1, 2 (Cutler Memo); Letter from Jack Quinn to Hon. William A. Zellif, Jr., Oct. 1, 1996, at 1 (Quinn Letter/FBI); Memorandum from President Bush to Secretary of Defense Richard Cheney Re: Congressional Subpoena for an Executive Branch Document, August 8, 1991, at 1 (Bush Memo).

[9]Smith Letter/Watt, *supra* n. 5 at 31; see also *id.* at 30 ("congressional oversight interest will support a demand for predecisional, deliberative documents in the possession of the Executive Branch only in the most unusual circumstances"). *Accord*, Barr Memo, *supra* n. 5 at 192 ("Congress will seldom have any legitimate legislative interest in knowing the precise predecisional positions and statements of particular Executive Branch officials".).

[10]Smith Letter/Watt, *supra* n. 5 at 30; *see also* Statement of Assistant Attorney General William H. Rehnquist, reprinted in Executive Privilege: The Withholding of Information by the Executive: Hearings Before the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary, 92d Cong. 1st Sess. 424 (Rehnquist Statement). ("The notion that the advisors whom he has chosen should bear some sort of a hybrid responsibility to opinion makers outside of the government, which notion in practice would inevitably have the effect of diluting their responsibility to him, is entirely inconsistent with our tripartite systems of government. The President is entitled to undivided and faithful advice from his subordinates, just as Senators and Representatives are entitled to the same sort of advice from

The executive has also argued that because candor is the principal value served by the exemption, its protection should extend beyond predecisional deliberations to deliberations involving decisions already made. "Moreover, even if the decision at issue had already been made, disclosure to Congress could still deter the candor of future Executive Branch deliberations".[11] Executives have also taken the position that the privilege covers confidential communications with respect to policymaking well beyond the confines of the White House and the President's closest advisors. The Eisenhower Administration took the most expansive approach, arguing that the privilege applied broadly to advice on official matters among employees of the executive branch.[12] The Nixon Administration appears to have taken a similar view, arguing that the privilege applied to decisionmaking at a "high governmental level", but conceding that the protected communication must be related to presidential decisionmaking.[13] The Reagan Justice Department appears to have taken a slightly narrower view

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their legislative and administrative assistants, and judges to the same sort of advice from their law clerks".).

[11]Smith Letter/Watt, *supra* n. 5, 5 Op. OLC at 29.

[12]See Rozelle, *supra*, at 44-46.

[13]In his prepared statement to the Subcommittee on Separation of Powers of the Senate Judiciary Committee, Assistant Attorney General Rehnquist distinguished between "those few executive branch witnesses whose sole responsibility is that of advising the President" who "should not be required to appear [before Congress] at all, since all of their official responsibilities would be subject to a claim of privilege" and "the executive branch witness . . . whose responsibilities include the administration of departments or agencies established by Congress, and from whom Congress may quite properly require extensive testimony," subject to "appropriate" claims of privilege. Rehnquist Statement, *supra* n. 10 at 427. Moreover, in colloquy with Senator Helms, Mr. Rehnquist seemed to accept that the privilege protected only communications with some nexus to presidential decisionmaking:

> SENATOR ERVIN: As I construe your testimony, the decisionmaking process category would apply to communications between presidential advisers and the President and also to communications made between subordinates of the President when they are engaged in the process of determining what recommendations they should make to the President in respect to matters of policy.
>
> MR. REHNQUIST: It would certainly extend that far, yes.

Id. at 439-40.

of the scope of the privilege, requiring that the protected communications have some nexus to the presidential decisionmaking process.[14]

The Bush Administration took the position that recommendations made to senior department officials and communications of senior policymakers throughout the executive branch were protected by executive privilege without regard to whether they involved communications intended to go to the President.[15] Finally, the Clinton administration has taken the similarly expansive position that all communications within the White House[16] or between the White House and any federal department or agency[17] are presumptively privileged.

The executive has acknowledged some limits to its use of executive privilege. Thus, presidents have stated they will not use executive privilege to block congressional inquiries into allegations of fraud, corruption, or other illegal or unethical conduct in the executive branch. The Clinton Administration has announced that "[i]n circumstances involving communications relating to investigations of personal wrongdoing by government officials, it is our practice not to assert executive privilege, either in judicial proceedings or in congressional investigations and hearings".[18] Similarly, the Reagan Administration policy was to refuse to invoke executive privilege when faced with allegations of illegal or unethical conduct: "[T]he privilege should not be invoked to conceal evidence of wrongdoing or criminality on the part of executive officers".[19] A significant application of this policy came in the Iran/Contra investigations when President Reagan did not assert

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[14]See Memorandum for the Attorney General Re: Confidentiality of the Attorney General's Communications in Counseling the President, 6 Op. OLC 481, 489 (1982)(Olson Memo).

[15]Bush Memo, *supra* n. 8 at 1. Letter from General Counsel, DOD, Terrence O'Donnell to Hon. John Conyers, Jr., Oct. 8, 1991, at 5 (O'Donnell Letter).

[16]See, *e.g.*, Cutler Memo, *supra* no. 8 at 2.

[17]See, *e.g.*, Cutler Memo, *supra* n. 8 at 2 (Communications between White House and departments or agencies, including advice to or from to White House).

[18]Cutler Memo, *supra* n. 8 at 1.

[19]Congressional Subpoenas of Department of Justice Investigative Files, 8 Op. OLC 315 (1984). *Accord* Smith Letter/EPA, *supra* n. 5 at 36 ("These principles will not be employed to shield documents which contain evidence of criminal or unethical conduct by agency officials from proper review".).

executive privilege and even made "relevant excerpts" of his personal diaries available to congressional investigators.[20]

The executive has often tied its willingness to forego assertion of privilege claims to the recognized exceptions to the deliberative process exemption, stating that it would not seek to protect materials whose disclosure "would not implicate or hinder" the executive decisionmaking processes.[21] Thus, factual, nonsensitive materials -- communications from the Attorney General [or other executive branch official] which do not contain advice, recommendations, tentative legal judgments, drafts of documents, or other material reflecting deliberative or policymaking processes -- do not fall within the scope of materials for which executive privilege may be claimed as a basis of nondisclosure.[22]

Recent administrations have stated that their policy "is to comply with congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch".[23] Executive privilege will be invoked only after "careful review",[24] in the "most compelling circumstances",[25] and only after the executive has done "the utmost to reach an accommodation" with Congress.[26] The Bush Administration limited the formal claims of executive privilege to those instances where the effort to accommodate had failed and Congress had issued a subpoena.[27] The duty to seek an accommodation is the result of the uncertain boundaries between

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[20]*See* David Hoffman, "President Offers to Share Iran Sales Notes with Hill; Aides Reversed on Memoir Materials", *Washington Post*, February 3, 1987, at A1.

[21]Olson Memo, *supra* n. 14 at 486.

[22]*Id.*; see also Smith Letter/EPA, *supra* n. 5 at 32 ("policy does not extend to all material contained in investigative files... The only documents which have been withheld are those which are sensitive memoranda or notes by . . . attorneys and investigators reflecting enforcement strategy, legal analysis, lists of potential witnesses, settlement considerations, and similar materials the disclosure of which might adversely affect a pending enforcement action, overall enforcement policy, or the rights of individuals".).

[23]Cutler Memo, *supra* n. 5 at 1. *Accord* Memorandum from President Reagan for the Heads of Executive Departments, and Agencies Re: Procedures for Governing Responses to Congressional Requests for Information, November 4, 1982 (Reagan Memo).

[24]Cutler Memo, *supra* n. 5 at 1.

[25]Reagan Memo, *supra* n. 23, at 1.

[26]Barr Memo, *supra* n. 5, at 185.

[27]*Id.* at 185, 186.

executive and legislative interests.[28] This uncertainty imposes upon each of the branches an "obligation. . . to accommodate the legitimate needs of the other",[29] and a duty to conduct "good faith negotiations."[30] Avoiding the disclosure of embarrassing information is not a sufficient reason to withhold information from Congress.[31] In fact it has been averred that invocation of the privilege should not even be considered in the absence of a "demonstrable justification that Executive withholding will further the public interest".[32]

Where negotiations have faltered and the President has made a formal claim of executive privilege, the executive will likely argue (as the Clinton Administration has in its two latest invocations of executive privilege[33]) that the investigating committee has not made the showing required under *Senate Select Committee v. Nixon* that the subpoenaed evidence is "demonstrably critical to the responsible fulfillment of the Committee's functions". 498 F.2d at 731. As has been indicated above, since at least the Reagan Administration, each executive has argued that Congress's interest in executive information is less compelling when the Committee's function is oversight than when it is considering specific legislative proposals.

In sum, then, in the absence of further judicial definition of executive privilege since the Nixon cases, the executive, through presidential statements, Office of Legal Counsel Opinions, and, most recently, White House Counsel directives, has attempted to effect a practical expansion of the scope of the privilege. The key vehicle has been the notion of deliberative process. Developed under the Freedom of Information Act to provide limited protection for the predecisional considerations of agency officials, it has been melded with the recognized presidential interest in confidentiality of his communications with his close advisors to include pre-and post-decisional deliberations and the factual underpinnings of those decisional processes, and is argued to reach policy deliberations and communications of department and agency officials and employees in which the President may have an interest. The Clinton Administration has sought to make this doctrinal expansion effective by centralizing scrutiny and control of all potential claims of executive privilege in the White House Counsel's Office. In a memorandum dated September 28, 1994, from White House Counsel Lloyd Cutler to all department and agency general

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[28]Rehnquist Statement, *supra* n. 10, at 420.

[29]Smith Letter/Watt, *supra* n. 5, at 31.

[30]Reagan Memo, *supra* n. 23, at 1.

[31]Rehnquist Statement, *supra* n. 10, at 42?.

[32]*Id.*

[33]Letter from Attorney General Janet Reno to President Clinton, September 20, 1996, at 2-3 (Reno Letter/Haiti); Letter from Attorney General Reno to President Clinton, September 30, 1996, at 2 (Reno Letter/FBI).

counsels, agency heads were instructed to directly notify the White House Counsel of any congressional request for "any document created in the White House . . . or in a department or agency, that contains deliberations of, or advice to or from the White House" which may raise privilege issues. The White House Counsel is to seek an accommodation and if that does not succeed, he is to consult with the Attorney General to determine whether to recommend invocation of privilege to the President. The President then determines whether to claim privilege, which is then communicated to the Congress by the White House Counsel.[34]

The Cutler memo modifies President Reagan's 1982 establishment of a more decentralized procedure. Under the Reagan memorandum if the head of an agency, with the advice of agency counsel, decided that a substantial question was raised by a congressional information request, the Attorney General, through the Office of Legal Counsel, and the White House Counsel's Office, were promptly notified and consulted. If one or more of the presidential advisors deemed the issue substantial, the President was informed and decided, and the decision was to be communicated by the agency head to the Congress. The Reagan memo also contrasts with the Cutler memo in that it had a far narrower definition of what the privilege covered. The Reagan memo pinpointed national security, deliberative communications that form part of the decisionmaking process, and other information important to the discharge of Executive Branch constitutional responsibilities.[35]

In addition, recent administrations have aggressively challenged congressional efforts to engage in oversight, often based on the *Senate Select Committee* decision, but also on a broad view of the insulation presumed to be provided by prosecutorial discretion when congressional investigations of agency law enforcement activities is involved.

Establishing the White House Counsel's Office as a central clearinghouse and control center for presidential privilege claims appears to have had the effect of diminishing the historic role of the Justice Department's Office of Legal Counsel as the constitutional counselor to the President and limiting agencies ability to deal informally with their congressional overseers, which is likely to have been its principal objective. An apparent consequence has been a more rapid escalation of individual interbranch information clashes, a widening and hardening of the differences in the legal positions of the branches on privilege issues, and an increased difficulty in resolving disputes informally and quickly. President Clinton has formally asserted executive privilege three times and has resolved a number of disputes under the pressure of imminent committee actions on contempt citations and subpoena issuances. In addition, the Clinton Administration has litigated, and lost, four significant

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[34]Cutler Memo, *supra* n. 5 at 2-3.

[35]Reagan Memo, *supra* n. 23 at 2.

immunity privilege cases in the last year.[36] One, *In re Sealed Case*, to which we now turn, contradicts many of key executive assumptions about the privilege just detailed and thus may reshape the nature and course of future presidential privilege disputes.

4. Implications and Potential Impact of *In Re Sealed Case* on Executive Branch Positions on Executive Privilege

In *In re Sealed Case*, 116 F.3d 550, *reissued in unredacted form*, 121 F.3d 729 (D.C. Cir. 1997), the appeals court addressed several important issues left unresolved by the Watergate cases: the precise parameters of the presidential executive privilege; how far down the chain of command the privilege reaches; whether the President has to have seen or had knowledge of the existence of the documents for which he claims privilege; and what showing is necessary to overcome a valid claim of privilege.

The case arose out of an Office of Independence Counsel (OIC) investigation of former Agriculture Secretary Mike Espy. When allegations of improprieties by Espy surfaced in March of 1994, President Clinton ordered the White House Counsel's Office to investigate and report to him so he could determine what action, if any, he should undertake. The White House Counsel's Office prepared a report for the President, which was publically released on October 11, 1994. The President never saw any of the underlying or supporting documents to the report. Espy had announced his resignation on October 3, to be effective on December 31. The Independent Counsel was appointed on September 9 and the grand jury issued a subpoena for all documents that were accumulated or used in preparation of the report on October 14, three days after the report's issuance. The President withheld 84 documents, claiming both the executive and deliberative process privileges for all documents. A motion to compel was resisted on the basis of the claimed privileges and after *in camera* review the district court quashed the subpoena, but in its written opinion did not discuss the documents in any detail and provided no analysis of the grand jury's need for the documents. The appeals court reversed.

At the outset, the court's opinion carefully distinguishes between the "presidential communications privilege" and the "deliberative process privilege". Both, the court observed, are executive privileges designed to protect the confidentiality of executive branch decisionmaking. But the deliberative process privilege applies to executive branch officials generally, is a common law privilege which requires a lower threshold of need to be overcome, and

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[36] *Clinton v. Jones*, 117 S Ct. 1636 (1997)(no temporary presidential immunity from civil suit for unofficial acts); *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910 (8th Cir. 1997), cert. denied 117 S.Ct. 2487 (1997)(claims of attorney-client and work product privilege denied); *In re Sealed Case* 116 F.3d 550, *reissued in unredacted form*, 121 F.3d 729 (D.C. Cir 1977)(claims of executive privilege rejected); *In re Sealed Case*, 124 F.3d 230 (D.C. Cir. 1997)(claims of attorney-client and work product privilege denied).

"disappears altogether when there is any reason to believe government misconduct has occurred". 121 F.3d at 745, 746; see also *id.* at 737-738 ("[W]here there is reason to believe the documents sought may shed light on government misconduct, the [deliberative process] privilege is routinely denied on the grounds that shielding internal government deliberations in this context does not serve 'the public interest in honest, effective government'").

On the other hand, the court explained, the presidential communications privilege is rooted in "constitutional separation of powers principles and the President's unique constitutional role" and applies only to "direct decisionmaking by the President". *Id.* at 745, 752. See also *id.* at 753 ("...these communications nonetheless are ultimately connected with presidential decisionmaking".). The privilege may be overcome only by a substantial showing that "the subpoenaed materials likely contain[] important evidence" and that "the evidence is not available with due diligence elsewhere". *Id.* at 754. See also *id.* at 757. The presidential privilege applies to all documents in their entirety[37] and covers final and post-decisional materials as well as pre-deliberative ones. *Id.* at 745.

Turning to the chain of command issue, the court held that the presidential communications privilege must cover communications made or received by presidential advisers in the course of preparing advice for the President even if those communications are not made directly to the President. The court rested its conclusion on "the President's dependence on presidential advisers and the inability of the deliberative process privilege to provide advisers with adequate freedom from the public spotlight" and "the need to provide sufficient elbow room for advisers to obtain information from all knowledgeable sources". *Id.* at 752. Thus the privilege will "apply both to communications which these advisers solicited and received from others as well as those they authored themselves. The privilege must also extend to communications authored or received in response to a solicitation by members of a presidential adviser's staff". *Id.*

The court, however, was acutely aware of the dangers to open government that a limitless extension of the privilege risks and carefully cabined its reach by explicitly confining it to White House staff, and not staff in the agencies, and then only to White House staff that has "operational proximity" to direct presidential decisionmaking.

> We are aware that such an extension, unless carefully circumscribed to accomplish the purposes of the privilege, could pose a significant risk of expanding to a large swath of the executive branch

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[37]In contrast, the deliberative process privilege does not protect documents that simply state or explain a decision the government has already made or material that is purely factual, unless the material is inextricably intertwined with the deliberative portions of the materials so that disclosure would effectively reveal the deliberations. 121 F.3d at 737.

a privilege that is bottomed on a recognition of the unique role of the President. In order to limit this risk, the presidential communications privilege should be construed as narrowly as is consistent with ensuring that the confidentiality of the President's decisionmaking process is adequately protected. Not every person who plays a role in the development of presidential advice, no matter how remote and removed from the President, can qualify for the privilege. In particular, the privilege should not extend to staff outside the White House in executive branch agencies. Instead, the privilege should apply only to communications authored or solicited and received by those members of an immediate White House advisor's staff who have broad and significant responsibility for investigation and formulating the advice to be given the President on the particular matter to which the communications relate. Only communications at that level are close enough to the President to be revelatory of his deliberations or to pose a risk to the candor of his advisers. *See* AAPS, 997 F.2d at 910 (it is "operational proximity" to the President that matters in determining whether "[t]he President's confidentiality interests" is implicated)(emphasis omitted).

Of course, the privilege only applies to communications that these advisers and their staff author or solicit and receive in the course of performing their function of advising the President on official government matters. This restriction is particularly important in regard to those officials who exercise substantial independent authority or perform other functions in addition to advising the President, and thus are subject to FOIA and other open government statutes. See *Armstrong v. Executive Office of the President*, 90 F.3d 553, 558 (D.C. Cir. 1996), *cert denied* – U.S. ---, 117 S.Ct. 1842, 137 L. Ed.2d 1046 (1997). The presidential communications privilege should never serve as a means of shielding information regarding governmental operations that do not call ultimately for direct decisionmaking by the President. If the government seeks to assert the presidential communications privilege in regard to particular communications of these "dual hat" presidential advisers, the government bears the burden proving

> that the communications occurred in conjunction with the process of advising the President.

Id. (footnote omitted).

The appeals court's limitation of the presidential communications privilege to "direct decisionmaking by the President" makes it imperative to identify the type of decisionmaking to which it refers. A close reading of the opinion makes it readily apparent that it is meant to encompass only those functions that form the core of presidential authority, involving what the court characterized as "quintessential and non-delegable Presidential power". *Id.* at 752. In the case before it the court was specifically referring to the President's Article II appointment and removal power which was the focal point of the advice he sought in the Espy matter. But it is clear from the context of the opinion that the description was meant to be in juxtaposition with the appointment and removal power and in contrast with "presidential powers and responsibilities" that "can be exercised or performed without the President's direct involvement, pursuant to a presidential delegation of authority or statutory framework". *Id.* at 752-53. The reference the court uses to illustrate the latter category is the President's Article II duty "to take care that the laws are faithfully executed", a constitutional direction that the courts have consistently held not to be a source of presidential power but rather an obligation on the President to see to it that the will of Congress is carried out by the executive bureaucracy. See, *e.g., Kendall ex rel. Stokes v. United States*, 37 U.S. (12 Pet.) 522, 612-613 (1838); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952); *Myers v. United States*, 272 U.S. 52, 177 (1926)(Holmes, J., dissenting); *National Treasury Employees Union v. Nixon*, 492 F.2d 587, 604 (D.C. Cir. 1974).

The appeals court, then, would appear to be confining the parameters of the newly formulated presidential communications privilege by tying it to those Article II functions that are identifiable as "quintessential and non-delegable", which would appear to include, in addition to the appointment and removal powers, the commander-in-chief power, the sole authority to receive ambassadors and other public ministers, the power to negotiate treaties, and the power to grant pardons and reprieves. On the other hand, decisionmaking vested by law in agency heads such as rulemaking, environmental policy, consumer protection, workplace safety and labor relations, among others, would not be covered. Of course, the President's role in supervising and coordinating (but not displacing) decisionmaking in the executive branch remains unimpeded. But his communications would presumably not be cloaked by constitutional privilege.[38]

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[38] When *In re Sealed Case* was decided, the House Resources Committee was in the midst of an inquiry of President Clinton's utilization of the Antiquities Act of 1906, 16 U.S.C. 431 (1994), which authorizes the President, in his discretion, to declare by public proclamation objects of historic or scientific interest on federal lands to be national monuments, by reserving parcels that "shall be confined to the smallest area compatible with the proper care and

Such a reading of this critical passage is consonant with the court's view of the source and purpose of the presidential communications privilege and its expressed need to confine it as narrowly as possible. Relying on *Nixon I*, the *In re Sealed Case* court identifies "the President's Article II powers and responsibilities as the constitutional basis of the presidential communications privilege. . . Since the Constitution assigns these responsibilities to the President alone, arguably the privilege of confidentiality that derives from it also should be the President's alone". *Id.* at 748. Again relying on Nixon I the court pinpoints the essential purpose of the privilege: "[T]he privilege is rooted in the need for confidentiality to ensure that presidential decisionmaking is of the highest caliber, informed by honest advice and knowledge. Confidentiality is what ensures the expression of 'candid, objective, and even blunt or harsh opinions' and the comprehensive exploration of all policy alternatives before a presidential course of action is selected". *Id.* at 750. The limiting safeguard is that the privilege will apply in those instances where the Constitution provides that the President alone must make a decision. "The presidential communications privilege should never serve as a means of shielding

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management of the objects to be protected." The Act establishes no special procedures for the decision to declare a national monument and contains no provision for judicial review. Shortly before the 1996 presidential election President Clinton reserved 1.7 million acres in Utah by proclamation. Central to the Committee's inquiry as to the propriety and integrity of the decisionmaking process that lead to the issuance of the presidential proclamation were the actions of the Council on Environmental Quality (CEQ), an office within the Executive Office of the President with, concededly, about the same degree of advisory proximity as that of the White House Counsel's Office. Requests for physical production of documents from CEQ met with limited compliance: an offer to view 16 documents at the White House. The Committee believed that it required physical possession in order to determine the propriety of the process and issued a subpoena which was not complied with on the return date. During intense negotiations, the White House claimed the documents were covered by the presidential communications privilege, even as defined by *In re Sealed Case*. In a letter to the Committee the White House Counsel's Office argued that the opinion did not confine the privilege to just core Article II powers, but included presidential decisionmaking encompassed within the Article II duty to take care that the laws be faithfully executed. It asserted that since the President had the sole authority to designate a monument by law, that decision process, including deliberations among and advice of White House advisers, was covered. The Committee in reply letters disagreed, arguing that *In re Sealed Case* would not encompass a statutory delegation of decisional authority. On the eve of a scheduled Committee vote on a resolution of contempt the White House produced all the documents. *See* 143 Cong. Rec. E2259-2272 (daily ed. Nov. 9, 1997)(Remarks of Hon. James V. Hansen presenting staff study of committee actions and documents in regard to the establishment of the Grand Staircase-Escalante National Monument). *See also* Ruth Larson, "White House Yields Papers On Utah Wilderness Decision," Wash. Times, October 23, 1997, A3.

information regarding governmental operations that do not call ultimately for direct decisionmaking by the President". *Id.* at 752.

Having found that the presidential privilege applied to the withheld documents, the court considered whether the Independent Counsel had made a substantial demonstration that the subpoenaed documents likely contained important evidence and that the evidence was not readily available elsewhere. The OIC made two arguments on need, one general, the other more focused. The general claim contended that since the White House had investigated the same subject matter as the grand jury, that is, whether Espy accepted improper gifts or otherwise abused his position, the White House documents will be clearly relevant. The court found the claim insufficient, holding that while the material would likely be relevant, the OIC had not shown that it would be unable to obtain the information from alternative sources or given an adequate explanation as to why it particularly needed to know what evidence was in the White House files. *Id.* at 760.

The second argument was more focused, claiming that, the grand jury was investigating whether Espy made false statements to the White House during its investigation and that evidence of statements made by Espy or his attorneys to the White House were essential in determining whether such false statements were made. The court found this contention sufficiently powerful since the material would provide the precise evidence the grand jury needed and would not be available elsewhere. The court therefore directed the district court on remand to review the 84 documents and provide the Independent Counsel all evidence that might reasonably be relevant to the question whether Espy made false statements.

5. Application of *In re Sealed Case* to the Hudson Dog Track Documents

The White House has raised tentative claims of executive privilege with respect to six documents in the Committee's possession: EOP 69070-71, dated April 24, 1995; EOP 69076-78, dated April 24, 1995; EOP 69082-89, dated August 23, 1996; EOP 690.92-97, undated; EOP 69098-99, dated October 23, 1996; and EOP 69102-05, dated August 1, 1996. There is little need to discuss the details of each of the documents other than to acknowledge that all deal, in one degree or another, with the Hudson Dog Track matter and all the communications involve at least one White House Office official. We need not go into greater detail because on their face the documents do not meet the threshold test of *In re Sealed Case* for coming within the presidential communications privilege: none of the documents involve a matter that will "call ultimately for direct decisionmaking by the President".

A cursory reading of the communications reflects an awareness on the part of both White House and agency officials that the ultimate federal government decisionmaker on the application of the three Indian tribes to establish a casino in Hudson, Wisconsin is the Secretary of the Interior. See 25

U.S.C. 2719(b)(1)(the Secretary is vested with authority, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, to determine that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community). The concern of White House and agency officials reflected in the documents is essentially a political one: that the White House could be seen as interfering with a decision statutorily committed to the discretion of the head of an executive agency. The *In re Sealed Case* court enjoined that "[t]he presidential communications privilege should never serve as a means of shielding information regarding governmental operations that do not call for direct decisionmaking by the President". 121 F.3d at 742. It is, therefore, likely that a reviewing court would find that the communications do not warrant even a "presumptive privilege" under standards established by *In re Sealed Case*, and if tested under the less demanding deliberative process privilege the claim would also likely be denied on the basis of the Committe's showing of substantial need or, more probably, that the privilege has been vitiated by the Committee's reasonable belief of the existence of government misconduct.

CLAIMS OF COMMON LAW PRIVILEGES BEFORE CONGRESSIONAL COMMITTEES

The White House has asserted tentative claims of attorney-client and work product privilege with respect to seven of the Hudson Dog Track documents. Under the analytic framework establish by *In re Sealed Case*, the inapplicability of the presidential communications privilege to the contested material allows a court to reach and assess common law privilege claims.[20]

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[20]The Office of Legal Counsel has consistently maintained that the attorney-client and work product privileges are subsumed under the executive privilege doctrine: "Although the attorney-client privilege may be invoked by the government in litigation and under the Freedom of Information Act separately from any 'deliberative process' privilege, it is not generally considered to be distinct from the executive privilege in any dispute between the executive and legislative branches. The interests implicated under common law by the attorney-client privilege generally are subsumed by the constitutional considerations that shape executive privilege, and therefore it is not usually considered to constitute a separate basis for resisting congressional demands for information. As this Office has previously noted, for the purpose of responding to congressional requests, communications between the Attorney General, his staff, and other Executive Branch "clients" that might otherwise fall within the common law attorney-client privilege should be analyzed in the same fashion as any other intra-Executive Branch communications. *See* Confidentiality of the Attorney General's Communications in Counseling the President, 6 Op. OLC 481, 490 & n. 17, 494 & n. 24 (1984)". 10 Op. OLC 91, 103-104 (1986). While it could be argued that these common law claims now appear to be moot, we will address them as if they were presented independently before a committee.

That case, which held the deliberative process privilege to be a common law privilege which is more easily overcome by a showing of need, and which "disappears" upon the reasonable belief by an investigating body that government misconduct has occurred, together with the Eighth Circuit's recent ruling casting doubt on the availability of any common law privilege to government officials in *In re Subpoena Duces Tecum*, 112 F.3d 910 (8th Cir. 1997), cert. denied 117 S.Ct. 2487 (1997), appears to reinforce the historic practice of congressional committees with respect to such claims. We will review that practice and the law on which it is based, and then examine and assess the substantiality of the claims of privilege raised.

It is well established by congressional practice that acceptance of a claim of attorney-client or work product privilege before a committee rests in the sound discretion of that committee. Neither can be claimed as a matter of right by a witness, and a committee can deny them simply because it believes it needs the information sought to be protected to accomplish its legislative functions. *See* Morton Rosenberg, "Investigative Oversight: An Introduction to the Law, Practice, and Procedure of Congressional Inquiry", CRS Report No. 95-464A, at 43 (April 7, 1995).(CRS Report).

In actual practice, all committees that have denied claims of privilege have engaged in a process of weighing considerations of legislative need, public policy, and the statutory duties of congressional committees to engage in continuous oversight of the application, administration and execution of the laws that fall within its jurisdiction, against any possible injury to the witness. Committees, among other factors, have considered whether a court would have recognized the claim in the judicial forum. See, *e.g.*, "Proceedings Against John M. Quinn, David Watkins, and Matthew Moore (Pursuant to Title 2, United States Code, Sections 192 and 194)", H. Rept. No. 104-598, 104th Cong., 2d Sess. 40-54 (1996); "Refusal of William H. Kennedy, III, To Produce Notes Subpoenaed By The Special Committee to Investigate Whitewater Development Corporation and Related Matters," Sen. Rept. No. 104-191, 104th Cong. 1st Sess. 9-19 (1995); "Proceedings Against Ralph Bernstein and Joseph Bernstein", H. Rept. No. 99-462, 99th Cong. 2d Sess. 13, 14 (1986); Hearings, "International Uranium Control", Before the Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess. 60, 123 (1977). Moreover, the conclusion that recognition of non-constitutionally based privileges is a matter of congressional discretion is consistent with both traditional British parliamentary and the Congress' historical practice. See CRS Report, *supra*, at 44-49.

The legal basis for Congress's prerogative in this area is based upon its inherent constitutional prerogative to investigate which has been long recognized by the Supreme Court as extremely broad and encompassing, and which is at its peak when the subject is fraud, abuse, or maladministration within a government department. *McGrain v. Dougherty*, 272 U.S. 135, 177 (1926); *Watkins v. United States*, 354 U.S. 178, 187 (1957); *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 504 n.15 (1975). The attorney-client privilege is, on the other hand, a judge-made exception to the normal principle

(1926); *Watkins v. United States*, 354 U.S. 178, 187 (1957); *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 504 n.15 (1975). The attorney-client privilege is, on the other hand, a judge-made exception to the normal principle of full disclosure in the adversary process which is to be narrowly construed and has been confined to the judicial forum. *Westinghouse Electric Corporation v. Republic of the Philippines*, 951 F.2d 1414, 1423 (3d Cir. 1991). The privilege has been deemed subject to a variety of exceptions, including communications between a client and attorney for the purpose of committing a crime or perpetrating a fraud or other obstruction of law at some future time, and to a strict standard of waiver.[40] See generally, Paul R. Rice, Attorney-Client Privilege in the United States, chaps. 8:2-8:15 and 9 (1993)(Rice). Indeed, in reviewing the proliferation of exceptions to the privilege, a panel of the District of Columbia Circuit commented that "any belief in an absolute attorney-client privilege is illusory". *In re Sealed Case*, 124 F.3d 230, 234 (D.C. Cir. 1997) (holding that attorney-client privilege is qualified after death of client and may yield to the need for use of confidential communications in criminal proceedings). *See also In re Grand Jury Subpoena Duces Tecum, supra*, 112 F.3d at 921 ("the White House assumes the attorney-client privilege is more predictable than it actually is".).

Moreover, the work product privilege,[41] another judge-made evidentiary exception, has always been recognized as a qualified privilege which may be overcome by a sufficient showing of need. The Supreme Court indicated, in the very case in which it created the doctrine, that "[w]e do not mean to say that all [ ] materials obtained or prepared with an eye toward litigation are necessarily free from discovery in all cases."[42] Thus the courts have repeatedly held that the work product privilege is not absolute, but rather is only a

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[40] However, at least two federal circuits have held that disclosures to congressional committees do not waive claims of privilege elsewhere. See, *Florida House of Representative v. Dept. of Commerce*, 961 F.2d 941, 946 (11th Cir. 1992); *Murphy v. Department of the Army*, 613 F.2d 1151, 1155 (D.C. Cir. 1979).

[41] Some courts refuse to call the doctrine a privilege at all. In *City of Philadelphia v. Westinghouse Electric Corp.* 210 F.Supp. 483, 485 (E.D. Pa. 1962), *mandamus and prohibition denied sub nom. General Electric Corp. v. Kirpatrick*, 312 F.2d 742 (3d Cir. 1962), the court stated that the work product principle "is not a privilege at all; it is merely a requirement that very good cause be shown if the disclosure is made in the course of a lawyer's preparation of a case."

[42] *Hickman v. Taylor*, 329 U.S. 495, 511 (1974).

qualified protection against disclosure,[43] and that the burden is on the party asserting it to establish its applicability.[44]

Claims of Attorney-Client Privilege

More particularly, with respect to the attorney-client privilege, a claimant must establish (1) a communication, (2) made in confidence, (3) to an attorney, (4) by a client, (5) for the purpose of seeking or obtaining legal advice. See, *e.g.*, 8 Wigmore, Evidence, Sec. 2292, at 554 (McNaughton rev. ed 1964); *United States v. United Shoe Machinery Corp.*, 89 F.Supp. 357, 358-359 (D. Mass. 1950). "The privilege does not extend, however, beyond the client's confidential communication to the attorney." *In re Fishel*, 557 F.2d 209, 211 (9th Cir. 1977). The only communications protected by the privilege, then, are those that will disclose what the client said in confidence to the lawyer. But it does not protect the *information* contained within communications. *Upjohn v. United States*, 449 U.S. 384, 395 (1981) ("The privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney."); Rice, *supra*, 5:1, at 288.

The burden of establishing the existence of the attorney-client privilege rests with the party asserting the privilege, *See, e.g., In re Grand Jury Investigation No. 83-2-35*, 737 F.2d 497, 450-51 (67th Cir. 1983). Blanket assertions of the privilege have been deemed "unacceptable", *SEC v. Gulf & Western Industries, Inc.*, 518 F.Supp. 675, 682 (D.D.C. 1981), and are strongly disfavored. *In re Grand Jury Investigation No. 83-2-35, supra*, 737 F.2d at 454. The proponent must conclusively prove each element of the privilege, but the mere fact that an individual communicates with an attorney does not make his communication privileged.[45]

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[43] See, e.g., *Central National Insurance Co. v. Medical Protective Co. of Forth Worth*, 107 F.R.D. 393, 395 (E.D. Mo. 1985); *Chepanno v. Champion International Corp.*, 104 F.R.D. 395, 396 (D. Ore. 1984).

[44] *Barclaysamerican Corp. v. Kane*, 746 F.2d 653, 656 (10th Cir. 1984); *Nutmeg Insurance Co. v. Atwell Vogel & Sterling*, 120 F.R.D. 504, 510 (W.D. La 1988).

[45] *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 912 (8th Cir. 1997)(rejecting applicability of common interest doctrine to communications at a meeting with White House Counsel's Office attorneys and private attorneys for the First Lady.); *United States v. Tedder*, 801 F.2d 1437, 1442-43 (4th Cir. 1986)(friend's communication with attorney held not privileged despite the fact that friend was both lawyer and colleague in the same firm when he spoke to her not as a professional legal advisor, did not seek legal advice from her, and did not expect communications to remain confidential); *United States v. Costanzo*, 625 F.2d 465, 468 (3d Cir. 1980)("[I]t is true that '[a] communication is not privileged simply because it is made by or to a person who happens to be

Moreover, courts have held that communications by an attorney in response to the client are not automatically privileged. These courts have reasoned that an attorney's communication can be privileged only derivatively, if the disclosure of the attorney's communication would reveal the content of the client's communication to the attorney. *Rice, supra*, at 5:2, 306-312. Also, when advice to a client is based on information supplied to the attorney from the public record it has been held to be non-privileged:

> The attorney-client privilege does not extend to correspondence from an attorney to a client when that correspondence contains advice based upon public information rather than confidential information provided by the client . . . . In this case, it appears that the information which was sent to the office of the General Counsel consisted almost entirely of material which was in the public record. Therefore, the General Counsel's opinion is not protected from discovery by the attorney-client privilege.

Community Savings and Loan Ass'n v. Federal Home Loan Bank Board, 68 F.R.D. 378, 382 (E.D. Wisc. 1975). *See also In re Underwriters at Lloyds*, 666 F.2d 55, 57 (14th Cir. 1981)("Advice given by [the attorney was] based on information from non-privileged documents and therefore was not privileged".) *In re Sealed Case*, 737 F.2d 94, 99 (D.C. Cir. 1984)("It remains the client's burden, however, to present to the court sufficient facts to establish the privilege; the claimant must demonstrate with reasonable certainty . . . that the lawyer's communications rests in significant and inseparable part on the client's confidential disclosure."); *Thomas v. Pansy Ellen Products; Inc.*, 672 F.Supp. 237, 243 (W.D. N.C. 1987)("It is client confidences, not attorney advice that are protected by the privilege."). Similarly, documents not prepared by the client for the purpose of communicating with an attorney confidentially do not acquire protection simply by turning them over to an attorney. *Colton v. United States*, 306 F.2d 633, 639 (2d Cir. 1962) *cert. denied* 371 U.S. 951 (1963)("[P]re-existing documents and financial records not prepared by the [clients] for the purpose of communicating with their lawyer in confidence . . . have acquired no special protection from the simple fact of being turned over to an attorney."); *Cosgrove v. Sears, Roebuck & Co.*, No. 81 Civ. 3482-CSH (SDNY, Mar. 30, 1982)(LEXIS, Genfed library, Dist. file)(diary not privileged because it was not made for the purpose of communicating with the attorney).

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a lawyer.'").

The foregoing brief summary of pertinent case law raises substantial questions whether the subject claims of attorney-client privilege would be held applicable to some of the documents listed in the privilege log.

Attorney-client privilege is claimed for six documents. EOP 69070-71, dated April 24, 1995 is a memo to Harold Ickes, then Deputy Chief of Staff to the President, from Loretta Avent, a Special Assistant to the President for Intergovernmental Affairs. Contrary to the privilege log entry for this item, it contains no "legal advice" for Ickes but is rather a recounting of attempts by a lobbyist to contact her on the Hudson Dog Track matter and the reasons, political and legal, for her reluctance to talk with him. Avent was not seeking or giving legal advice nor is there any indication that Avent and Ickes were in an attorney-client relationship at all.

EOP 67076-78, dated April 24, 1995, from Michael T. Schmidt, Senior Policy Analyst, White House Office of Policy Development, to White House Associate Counsel Cheryl D. Mills is a report on the details of a telephone conversation he and Loretta Avent had with lobbyist Pat O'Connor. While it is apparent that it is meant to be a confidential communication with an attorney it is not so clear that its purpose was to obtain legal advice.

EOP 69079-81 (undated) contains handwritten notes by Associate Counsel Mills on press accounts and recollections of government officials on the Hudson Dog Track matter. The courts have not extended the protection of the attorney-client privilege to an attorney's notes or memoranda to the file, particularly where there is no evident intent to communicate with the client. *Leybold-Heraeus Technologies, Inc. v. Midwest Instrument Co.*, 118 F.R.D. 609, 613 (E.D. Wisc. 1987); *National Corn Growers Assoc. v. Baker*, 623 F.Supp. 1262, 1277 (Ct. of Interna'tl Trade 1985); *Sneider v. Kimberly Clark Corp.*, 190 F.R.D. 1, 6 (N.D. Ill. 1980).

EOP 69098-99, dated October 23, 1996, is a transmittal by Chief of Staff Leon Panetta to the President of a status report on the Hudson Dog Track litigation prepared by an attorney in the White House Counsel's Office. The transmittal was not in response to a request for legal advice nor does it purport to be anything other than a status report based on information on the public record, which is normally not held to be privileged. EOP 69100, dated October 22, 1996, is a transmittal by the same White House Counsel Office attorney reporting to his superior how and what he found out about the status of the dog track litigation. For the same reasons, it would not likely be held privileged by a reviewing court.

Even assuming any or all the documents are deemed covered by attorney-client privilege, it is likely that a reviewing court would hold that the privilege has been overcome. The *In re Sealed Case* court made it clear that the common law deliberative process privilege "disappears altogether when there is any reason to believe government misconduct [has] occurred". 121 F.3d at 738. See also *id.* at 746. ("Where there is reason to believe the documents sought shed light on government misconduct, 'the privilege is routinely denied', on the

grounds that shielding internal government deliberations in this context does not 'serve the public's interest in honest, effective government'"). In the instant situation the documents are sought to be utilized by a congressional committee with clear jurisdiction over the subject matter and the documents appear to shed light on the question of misconduct. It is therefore likely that a reviewing court would find the *In re Sealed Case* court's rationale with respect to overcoming the deliberative process privilege in the face of a congressional investigation of misconduct applicable as well to a claim of attorney-client privilege. See also *In re Grand Jury Subpoena Duces Tecum,supra*, 112 F.3d at 917-18 (holding that the White House could not invoke any form of governmental attorney-client privilege to withhold relevant information concerning conversations between attorneys representing the White House and the wife of the President from a grand jury conducting a criminal investigation.).

Claims of Work Product Protection

The qualified immunity from discovery of an attorney's work product recognized by the Supreme Court in *Hickman v. Taylor*, 329 U.S. 495 (1947), is now codified in Rule 23(b)(3) of the Federal Rules of Civil Procedure.[46] The Rule provides that in a civil action there is qualified immunity from discovery when materials are:

> 1. "documents and tangible things;"
> 2. "prepared in anticipation of litigation or for trial;" and
> 3. "by or for another party or for that other party's representative."

To overcome the qualified immunity, the party seeking discovery must make a showing of: (1) substantial need for the materials; and (2) inability to obtain the substantial equivalent of the information without undue hardship. Upon such a showing, the qualified immunity from discovery is overcome and the

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[46] Rule 26(b)(3) provides in pertinent part: "Trial Preparation: Materials .. . .[A] party may obtain discovery of documents and tangible things . . . prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation."

court will order the materials produced. See, generally 8 Wright, Miller and Marcus, Federal Practice and Procedure, Sections 2021-2028 (1994).

The federal rules do not define what is meant by the term "litigation" or "in anticipation of." However, the Special Masters' Guidelines for the Resolution of Privilege Claims, approved and adopted by the court in *United States v. American Telephone & Telegraph Co.*, 86 F.R.D. 603 (D.D.C. 1980), contain a detailed discussion of both phrases that reflects precedent to that time and has been influential since then. The Special Master defined "litigation" as including "a proceeding in a court or administrative tribunal in which the parties have the right to cross-examine witnesses or to subject an opposing party's presentation of proof to equivalent disputation." 86 F.R.D. at 627. On its face, the definition would not apply to Congress, which of course is not a court or administrative tribunal, or to a congressional investigative hearing which, while often confrontational, does not afford an opportunity for witnesses to cross-examine other witness or present rebuttal testimony as would be the case in the adversarial adjudicative forum. We are aware of no court that has held the work product doctrine applicable to a legislative proceeding. A recent appellate court ruling, discussed below, directly holds that it is not applicable. The definition is also consonant with the language of Rule 26(b)(3) which exclusively uses terms such as "party", "litigation", "trial" and "discovery" which are alien to the legislative hearing process. Wright, Miller and Marcus, *supra*, Section 2024 at 338-357; 86 F.R.D. at 627-30.

The "in anticipation" element was defined by the Special Master to mean

> any time after initiation of the proceeding or such earlier time as the party who normally would initiate the proceeding had tentatively formulated a claim, demand, or charge. When the material was prepared by a party who normally would initiate such a proceeding, that person must establish the date when the claim, demand, or charge was tentatively formulated. When the material was prepared by a potential defendant or respondent, that person must establish the date when he received a demand or warning of charges or information from an outside source that a claim, demand, or charge was in prospect.

86 F.R.D. at 627. The courts have made it clear that while there is no requirement that litigation have already commenced in order for the work product doctrine to be operative, there must be "a more immediate showing than the remote possibility of litigation". *Garfinkle v. Arcada National Corp.*, 64

F.R.D. 688, 690 (SDNY 1974). "[F]or documents to qualify as attorney work product, there must be an identifiable prospect of litigation (*i.e.*, specific claims that have already arisen) at the time the documents were prepared". *Fox v. California Sierra Financial Services*, 120 F.R.D. 520, 525 (N.D. Calif. 1988). One appellate court recently recognized that "because litigation is an ever present possibility in American life, it is more often the case than not that events are documented with the general possibility of litigation in mind. Yet '[t]he mere fact that litigation does ensue does not, by itself, cloak materials' with work product immunity. The document must be prepared because of the prospect of litigation when the preparer faces an actual claim or potential claim following an actual event or serves of events that reasonably could result in litigation". *National Union Fire Ins. Co. v. Murray Sheet Metal Co.*, 967 F.2d 980, 984 (4th Cir. 1992). Materials prepared in the ordinary cause of business will not be protected from production, even if the party is aware that the document may also be useful in the event of litigation. *Smith v. Conway Organization*, 154 F.R.D. 73, 78 (SDNY 1994). *See also Litton Industries v. Lehman Bros. Kuhn Loeb, Inc.*, 125 F.R.D. 51, 54-55 (SDNY 1989). Similarly, "[t]he acts performed by a public employee in the performance of his official duties are not 'prepared in anticipation of litigation or for trial' merely by virtue of the fact that they are likely to be the subject of later litigation". *Grossman v. Schwartz*, 125 F.R.D. 376, 388 (SDNY 1989); *Department of Economic Development v. Arthur Anderson & Co.*, 139 F.R.D. 295, 700 (SDNY 1991).

In a recent Eighth Circuit decision, *In re Grand Jury Subpoena Duces Tecum, supra*, involving, *inter alia*, a White House claim of work product immunity in the face of a grand jury subpoena for notes taken by White House Counsel's Office attorneys during meetings with First Lady Hillary Rodham Clinton, a divided panel rejected the applicability of the work product doctrine on the ground that it had not been shown that the attorneys involved were preparing for or anticipating some sort of "adversarial proceeding" involving the First Lady. It held that neither the independent counsel investigation then in progress nor a possible congressional investigative hearing provided the element of "anticipation of litigation or trial" necessary to invoke the immunity:

> The White House's argument that its lawyers were preparing for the OIC's investigation is simply unpersuasive; as we have stated previously, the OIC is not investigating the White House, nor could it do so. White House officials may be under investigation on account of their individual acts, but we know of no authority allowing a client such as the White House to claim work product immunity for materials merely because they were prepared while some other person, such as Mrs. Clinton, was anticipating litigation. Cf. *In re*

> *California Pub. Utils. Comm'n*, 892 F.2d 778, 781 (9th Cir. 1989) (concluding that non-party to litigation may not assert work product doctrine).
>
> As a fall-back position, the White House suggests that anticipated congressional hearings will suffice as well as anticipated litigation. The Restatement seems to agree with the White House. See Restatement § 136 cmt. h (stating that litigation "includes a proceeding such as a grand jury or a coroner's inquiry or an investigative legislative hearing"). Neither the White House, Mrs. Clinton, nor the Restatement cites any authority for this proposition, however, and we have discovered none. *Cf. P. & B. Marina, L.P. v. Logrande, 136* F.R.D. 50, 58-59 (E.D.N.Y. 1991) (finding letters from lobbyist to client not protected work product), aff'd, 983 F.2d 1047 (2d Cir. 1992) (table). Even if it could be said that the White House anticipated a congressional investigation of the White House itself, rather than merely of individuals who work at the White House, and even if we consider a congressional investigation to be an adversarial proceeding, the only harm that could come to the White House as a result of such an investigation is political harm. As in our discussion of the common-interest doctrine, we decline to endorse the position of the White House where it is based on nothing more than political concerns.

112 F.3d at 924-925.

Rule 26(b)(3) provides heightened protection for "mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation". This protection against disclosure, however is not absolute and has been held to yield in appropriate circumstances. *In re John Doe Corporation*, 675 F.2d 482, 492 (2d Cir. 1982). Thus when mental impressions are *at issue* in the case and the need for the material is compelling, they have been held discoverable. *Holmgren v. State Farm Mutual Ins. Co.*, 976

F.2d 573, 577 (9th Cir. 1992)(claim of bad faith in the settlement process); *Handguards Inc. v. Johnson & Johnson*, 413 F.Supp 926, 931-31 (N.D. Calif. 1976)(bad faith in instituting litigation). Courts have consistently denied the protection in such "at issue" cases where complete or partial lack of recollection of critical meetings or events has been claimed. *Erlich v. Howe*, 848 F.Supp 842, 492-93 (SDNY 1994); *Redvanly v. NYNEX Corp.*, 152 F.R.D. 460, 468-69 (SDNY 1993); *Doubleday v. Ruh*, 149 F.R.D. 601, 608 (E.D. Cal. 1993); *In re Worlds of Wonder Securities Litigation*, 147 F.R.D. 208, 212 (N.D. Cal. 1992). The protection has been denied where what was at issue was the reason a government prosecutor instituted an action. *Doubleday v. Ruh*, *supra*, 149 F.R.D. at 608 ("Here, plaintiff asserts that the main issue of her case is the affect [sic] defendants had on the district attorney's decision to prosecute".); *EEOC v. Anchor Continental, Inc.*, 74 F.R.D. 523, 526-28 (D.S.C. 1977)("However, there must be an exception to this [work product] rule when the Court's in camera inspection reveals that the plaintiff, a branch of the United States government, has little faith in its case, has little evidence to go on and hopes to be able to prove the case through discovery or force a settlement upon a defendant who might not be able to stand the financial burden of defending itself".).

Work product protection is claimed for four documents: EOP 69079-81 (undated) containing handwritten notes by a White House Counsel Office attorney on press accounts and recollections of government officials on the Hudson Dog Track matter; EOP 69098-99, dated October 23, 1996, a transmittal by the President's Chief of Staff of a status report on the dog track litigation prepared by a White House Office attorney; EOP 69100, dated October 22, 1996, a transmittal by the same White House Counsel attorney reporting to his superior as to how and what he found about the status of the dog track litigation; and EOP 69101, dated October 23, 1996, another copy of the status report attached to the Chief of Staff's transmittal noted in EOP 69098-99.

In the Eight Circuit's decision in *In re Grand Jury Subpoena Duces Tecum*, *supra*, similar claims of work product privilege by the White House were rejected, the appeals court holding the doctrine inapplicable where it was not shown that the White House Counsel's Office attorneys involved were preparing for some sort of "adversarial proceedings". It ruled that neither an ongoing independent counsel investigation or a congressional oversight hearing provided the necessary element of "anticipation of litigation or trial" necessary to invoke the immunity. 112 F.3d 924-925. The court also held that the privilege would not apply even if a committee investigative hearing was deemed to be an adversarial proceeding since "the only harm that could come to the White House as a result of such an investigation is political harm. As in our discussion of the common interest doctrine, we decline to endorse the position of the White House where it is based on nothing more than political concerns". *Id.* at 925. As indicated above, work product claims have been denied where the documents were prepared by public employees in the performance of their official duties and in cases in which mental impressions are "at issue" and partial or complete lack of recollection of critical meetings and events is claimed and the need for the material is compelling. In the present circumstances, where similar claims

are being made, and the Committee is of the reasonable belief that misconduct has occurred and the subject documents or pertinent to that concern, it is likely that a court would deny the privilege.

Finally, the White House raises the question whether publication of the documents in question during the course of your investigation will have the effect of waiving any privileges that might otherwise be asserted in any pending or future litigation. Our review of the applicable case law, and the constitutional principles underlying congressional oversight and investigations, lead us to conclude that a reviewing court is not likely to find that disclosure by your Committee under the circumstances now obtaining would effect a waiver of any privileges that might be asserted in a related court proceeding.

There is no need to rehearse the constitutional basis for Congress's broad and encompassing authority to engage in oversight and investigation discussed above. Suffice to say, that power reaches all sources of information that enable it to carry out its legislative function, and in the absence of a countervailing constitutional privilege or a self-imposed statutory restriction on its authority, Congress and its committees have virtually plenary power to compel information needed to discharge its legislative function from executive agencies, private persons and organizations, and, within certain constraints, the information so obtained may be made public.

More particularly, once documents are in congressional hands, the courts have held that they must presume that the committees of Congress will exercise their powers responsibly and with due regard for the rights of effected parties. *FTC v. Owens-Corning Fiberglass Corp.*, 626 F.2d 966, 970 (D.C. Cir. 1980); *Exxon Corp. v. FTC*, 589 F.2d 582, 589 (D.C. Cir. 1978), *cert. denied*, 441 U.S. 943 (1979); *Ashland Oil Corp. v. FTC*, 458 F.2d 977, 979 (D.C. Cir. 1976). Nor may a court block congressional disclosure of information obtained from an agency or private party, at least where disclosure would serve a valid legislative purpose. *Doe v. McMillan*, 412, U.S. 306 (1973); *FTC v. Owings-Corning Fiberglass Corp., supra*, 626 F.2d at 970.

It is also well established that when the production of privileged communications is judicially compelled, compliance with the order does not waive the applicable privilege in another litigation, as long as it is demonstrated that the compulsion was resisted. See, *e.g., U.S. v. De La Jara*, 973 F.2d 746, 749-50 (9th Cir. 1992)("In determining whether the privilege should be deemed waived, the circumstances surrounding the disclosure are to be considered. *Transamerica Computer*, 573 F.2d at 652; U.S. Zolin, 809 F.2d 1411, 1415 (9th Cir. 1987), *aff'd in part, vacated in part*, 491 U.S. 554 (1989) (. . . When the disclosure is involuntary, we will find the privilege preserved if the privilege holder has made efforts 'reasonably designed' to protect and preserve the privilege. *See Transamerica Computer*, 573 F.2d at 650".); *Westinghouse Electric Corp. v. Republic of the Philippines*, 951 F.2d 1414, 1427 n. 14 (3d Cir. 1991)("We consider Westinghouse's disclosure to the DOJ to be voluntary even though it was prompted by a grand jury subpoena. Although Westinghouse

originally moved to quash the subpoena, it later withdrew the motion and produced the documents pursuant to the confidentially agreement. *Had Westinghouse continued to object to the subpoena and produced the documents only after being ordered to so so, we could not consider the disclosure to do so to be voluntary".)* (emphasis supplied); *Jobin v. Bank of Boulder (In re M&L Business Machines Co.),* 167 B.R. 631 (D. Colo. 1994)("Production of documents under a grand jury subpoena does not automatically vitiate the attorney-client privilege, much less in an unrelated civil proceeding brought by a non-governmental entity. This is especially true in a case such as this, where the record demonstrates that the Bank has consistently sought to protect its privilege".). Some courts have even refused to find waiver when the client's production, although not compelled, is pressured by the court. *Transamerica Computer Corp. v. IBM,* 576 F.2d 646, 651 (9th Cir. 1978). Similarly, another court found that a client's voluntary production of privileged documents during discovery did not effect a waiver because it was done at the encouragement of the presiding judge. *Duplan Corp. v. Deering Milliken, Inc.,* 397 F.Supp 1146, 1163 (S.D.S.C. 1974)(finding no waiver "where voluntary waiver of some communications was made upon the suggestion of the court during the course of the in camera proceedings".).

Moreover, at least two federal circuits have held that disclosures to congressional committees do not waive claims of privilege elsewhere. *See, Florida House of Representatives v. Dept. of Commerce,* 961 F.2d 941, 946 (11th Cir. 1992); *Murphy v. Department of the Army,* 613 F.2d 1151, 1155 (D.C. Cir. 1979).

In the current circumstances, the White House has vigorously attempted to protect its claims of privilege from the outset of the Committee's investigation. It has, in apparent good faith, resisted pressure to produce the subjects documents until the Committee issued a subpoena. It has continued to assert claimed privileges in an effort to forestall committee disclosure. We believe the case law just recounted provides sufficient support for the White House to successfully argue in an appropriate judicial forum that its conduct in the face of the Committee's demands demonstrates that its production was involuntary and does not waive any legitimate claim it might have.

It should also be noted that acceptance of the White House's request for non-disclosure would effectively vitiate Congress's constitutionally-based prerogative to inform not only itself but the public as well, through its hearing and report processes, about the functioning of its governmental apparatus. *See e.g., Nixon v. Administrator of General Services,* 433 U.S. 425, 453 (1977)(rejecting President Nixon's claim of executive privilege against congressional cooption of his presidential papers, finding that there was a "substantial public interest" [] in preserving those materials so that Congress, pursuant to its "broad investigative power", could examine them to understand the events that led to the President's resignation in order to guage the necessity for remedial legislation".). The court in *Murphy v. Department of the Army,* 613 F.2d 1131, 1155 (D.C. Cir. 1979), stated that Freedom of Information Act exemptions were no basis for withholding documents from Congress, explaining

that: "The obvious purpose of the Congress was to carve out for itself a special right of access to privileged information not share by others. Congress, whether as a body, through Committees, or otherwise, must have the widest possible access to executive branch information, if it is to perform its manifold responsibilities effectively. If one consequence of the facilitation of such access is that some information will be disclosed to congressional authorities but not to private persons, that is but an incidental consequence of the need for informed and effective lawmakers".

Murphy cannot be read to simply allow Congress to get information and then not be able to utilize it in the manner and by means it believes most effective for accomplishing its legitimate legislative functions. The Supreme Court and federal appellate tribunals have consistently ruled that pending civil and criminal proceedings are no impediments to congressional exercise of its oversight and investigative prerogative, no matter the consequence of possible impeding the successful governmental prosecution or defense of such actions. See CRS Report, *supra*, at 23-30. As was succinctly observed by Iran-Contra Independent Counsel Lawrence E. Walsh, "The legislative branch has the power to decide whether it is more important perhaps even to destroy a prosecution than to hold back testimony that they need. They make that decision. It is not a judicial decision or a legal decision but a political decision of the highest importance". Walsh, The Independent Counsel and the Separation of Powers, 25 Hous. L. Rev. 1, 9 (1988).

We conclude that, under the circumstances of the instant situation, if the Committee discloses any or all the documents during the pendency of a related judicial proceeding, it is likely that the court will hold the White House's compliance with the Committee's demand to be involuntary and not to effect the waiver of any applicable privileges. *Compare Garrity v. New Jersey*, 385 U.S. 493 (1967).

CONCLUSION

The District of Columbia Circuit's ruling in *In re Sealed Case* has established a new standard for assessing the substantiality of claims of presidential communications privilege. That privilege, which is constitutionally-based, applies only to direct presidential decisionmaking, a term that the court indicates limits the privilege to decisionmaking with respect to the core constitutional authorities vested in the President of Article II, such as appointment and removal, foreign relations, military affairs, national security, and the pardon power. The court also distinguished the deliberative process privilege from the presidential communications privilege, holding that it is a common law privilege applicable executive officials generally whose negation by courts or congressional committees is subject to less demanding scrutiny and which "disappears altogether when there is any reason to believe government misconduct has occurred". Applying the *In re Sealed Case* principles to the

circumstances here, it is concluded that since the final federal governmental decisionmaking authority with respect to the subject Indian gaming applications is vested in the Secretary of the Interior, the presidential communications privilege is inapplicable; and even if the attorney-client or work product privileges apply to one or more of the subject documents, a reviewing court would likely find that privileges are overcome by the Committee's need or vitiated by its reasonable belief of the existence of government misconduct.

Finally, it is concluded that if the Committee publishes the documents during the course of its legislative activities a reviewing court is likely to find that the White House has not waived the ability to assert the privileges in another forum since it has resisted disclosure throughout the proceeding, complying with production demands only after the issuance of a Committee subpoena.

Morton Rosenberg
Specialist In American
Public Law

ONE HUNDRED FIFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5074
MINORITY (202) 225–5051
TTY (202) 225–6852

November 26, 1997

By Facsimile: (202) 456-7931

Mr. Lanny Breuer, Esq.
Special Counsel to the President
The White House
Washington, D.C. 20500

Re: Hudson Dog Track Related Documents Subject to Executive Privilege

Dear Mr. Breuer:

It was good to meet with you and Dmitri Nionakis yesterday regarding certain documents listed on an October 21, 1997 White House privilege log. I appreciate your willingness to discuss the White House's position regarding the Committee on Government Reform and Oversight's public use of the documents during the course of its oversight responsibilities.

I understand your concern about many of these documents which relate to the Hudson Dog track issue. A White House official who dealt with the issue called it "political poison," which reflected her perception that the issue was at a minimum politically sensitive. However, embarassment alone is not enough to shield these documents from their public use by a congressional committee.

The issues raised by the entire Hudson Dog track matter are serious. Questions have been raised about whether the Secretary of the Interior, with the full knowledge of certain White House officials, denied an application by three impoverished Indian tribes to establish a casino at the Hudson Dog track in Hudson, Wisconsin, in exchange for campaign contributions from rival Indian tribes. This Committee has reached no conclusion on that issue; however, it is investigating the question and related matters thoroughly. The Committee can do so only with full cooperation of the White House, the Department of the Interior, and interested parties. Furthermore, the investigation must be conducted in public so that the American people can determine, after a full airing of the facts, whether or not the allegations are true.

The Supreme Court, in describing the breadth of the congressional power of inquiry, stated that Congress's investigative power "comprehends probes into departments of the Federal Government to expose corruption, inefficiency, or waste. *Watkins v. United States*, 354 U.S. 178, 187 (1957). The key to this phrase is the verb "expose." It is not enough that the Committee has access to the documents to use internally. Full public disclosure of the facts is the only long-term safeguard against abuse of or by governmental institutions. The Court recognized a "danger to effective and honest conduct of the Government if the legislative power to probe corruption in the Executive Branch were unduly hampered." *Id.* at 182. It is for this reason that the Court recognizes "the power of the Congress to inquire into and publicize corruption, maladministration, or inefficiencies in the agencies of Government." *Id.* at 200 n. 33 (emphasis added).

After considering your comments, reviewing the documents, and applying the law, I cannot agree that any of the documents listed on the privilege log are subject to either the attorney-client, work-product, deliberative process, or presidential communications privilege and have instead concluded that there is no substantial legal basis for claiming any of these privileges. You should know that the Congressional Research Service, the nonpartisan research arm of the Congress, concurs in our analysis and ultimate conclusion. I have asked them to provide the Committee with their legal analysis concerning the applicability of any of these privileges to the documents in question. I will forward that opinion to you after it becomes available to the Committee.

Without engaging in a long legal analysis in this letter, I do want to point out one key factor that your analysis seems to have omitted. During our meeting, Mr. Nionakis stated that the president's communications are "presumptively privileged" and that the Committee must demonstrate a sufficient showing of need to overcome the privilege. There might be some validity to this position if the communications involved actual or potential presidential decision making. This is not the case in the Hudson Dog track matter.

In re Sealed Case, which involved an appeal by the Espy Independent Counsel regarding the White House's invocation of executive privilege over 86 documents subpoenaed by the grand jury, made clear that not all presidential communications or those of his close advisors are covered by executive privilege. 121 F.3d 729 (D.C. Cir. 1997). The Court held, *inter alia*, that invocation of the presidential communications privilege is limited "specifically to decision making of the President." *Id.* at 745. The court made perfectly clear that "[t]he presidential communications privilege should never serve as a means of shielding information regarding governmental operations that do not call ultimately for direct decision making by the President." *Id.* at 752.

The documents at issue have nothing whatsoever to do with a decision the President could have or would have ultimately made. In fact, the President could not decide to grant or deny the casino license. He could not direct the Secretary of the Interior to decide one way or another. I am sure that you would agree that any such direction by the President to the Secretary would be improper. Furthermore, I'm sure you would agree that the President's close aids cannot do what the President himself cannot do. As you are aware, the decision whether to grant a casino license to an Indian tribe is statutorily vested in the Secretary of the Interior under the Indian Gaming Regulatory Act of 1988. Because the matters raised in the documents in question do not involve issues of presidential decision making, they are *a fortiori* not subject to the constitutionally based presidential communications privilege.

You also argued that some of the documents are subject to the common law deliberative process privilege. I disagree but will assume for arguments sake that you are correct. *In re Sealed Case* makes plain the deliberative process privilege "disappears altogether when there is any reason to believe government misconduct occurred." *Id.* at 746. Most observers of the Hudson Dog track case seem to agree that any undue or *ex parte* political pressure brought to bear on a quasi-adjudicatory procedure such as the one at issue in this case would ostensibly be improper. At least one person has testified that the Secretary of the Interior stated that the President's deputy chief of staff was directly involved in the process and that campaign contributions were a factor in the decision. Letters from the deputy chief of staff indicate that the Hudson dog track issue was of some interest to him. This is circumstantial evidence that misconduct may have occurred, and it is the job of a congressional oversight committee to publicly resolve the issues raised.

In the interests of comity between two coordinate branches of government, I will withhold making any recommendation to Chairman Burton about which documents the Committee should or should not utilize publicly until both you and I have reviewed the Congressional Research Service's legal opinion. At that time I would welcome an opportunity to discuss these issues with you again if you feel such a discussion would be productive. I will then make a recommendation to the Chairman and will promptly notify you about his decision.

Again, I appreciate your taking the time to meet with me and my staff and wish you a pleasant Thanksgiving.

Sincerely,

Richard D. Bennett
Chief Counsel

cc: Kenneth M. Ballen

ONE HUNDRED FIFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

November 18, 1997

BY FACSIMILE AND FIRST CLAS MAIL

Hon. Charles F. C. Ruff
Counsel to the President
The White House
Washington, D. C. 20500

RE: Documents Subject to Privilege

Dear Mr. Ruff:

On November 5, 1997, we met to discuss White House claims of privilege regarding nine documents pertaining to the Hudson dog track issue. At the time, I agreed not to make public seven of the nine documents. On November 6 and 7, 1997, the Committee on Government Reform and Oversight (the "Committee") held hearings and did not release the seven documents subject to White House claims of executive and attorney-client privilege.

Committee attorneys have reviewed these documents and are not able to discern any basis for a claim of privilege. In that we agreed to meet to discuss these documents, I request that such a meeting take place on or before Thursday, November 20, 1997. Either prior to this meeting, or at the meeting itself, I request that you provide a written analysis of why the White House has regarded these documents as "subject" to privilege. This will allow us to understand your contentions and have a record for future hearings as to why the White House has regarded these documents "subject" to privilege.

Thank you for you attention to this matter.

Sincerely,

Dan Burton
Chairman

cc: The Honorable Henry Waxman

Mr. BURTON. Congressman Gilman and others who weren't here today, would like to submit questions to you, Mr. Secretary. We would appreciate it if you would answer those.

Secretary BABBITT. Certainly.

[The information referred to follows:]

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

FEB 13 1998

The Honorable Dan Burton
Chairman, Committee on
Government Reform and Oversight
2157 Rayburn House Office Building
Washington, D.C. 20515

Attn: Judy McCoy

Dear Mr. Chairman:

This letter is in response to two questions submitted by you on behalf of Representative Gilman with regard to the Ramapough Mountain Indians Inc., recognition petition.

Question 1. Who in the White House contacted officials of the Bureau of Indian Affairs with regard to the proposed denial of the Ramapough Mountain Indian Tribe petition prior to its being signed, and why?

Answer: As far as we have been able to ascertain, the only possible contact with the White House on this issue was in early November 1993, during a budget meeting conducted by staff from the Office of Management and Budget with employees from the Bureau of Indian Affairs (BIA). In that meeting, the Ramapough Mountain recognition petition may have been mentioned along with other pending petitions in the course of discussing future BIA budget needs. We have been unable to ascertain any other contact between the Department of the Interior and the White House or one of its offices on this question.

Question 2. Who in the White House contacted Rep. Torricelli and other known Congressional supporters of Atlantic City gaming interests to "leak" the decision?

Answer: We understand that in a *Journal News* article dated November 17, 1993, and a *Bergen Record* article dated November 18, 1993 both Representative Roukema and then-Representative Torricelli cited the White House as the source of their information that the Ramapough Mountain recognition petition would be denied. We are unaware as to who the source or sources might have been.

It is possible that the White House or the two members of the New Jersey delegation can provide additional information.

Sincerely,

Melanie L. Beller
Assistant to the Secretary and Director
of Congressional and Legislative Affairs

cc: The Honorable Henry Waxman,
Ranking Minority Member

Mr. BURTON. In conclusion, I would like to note that we will be returning again to foreign money in the political system shortly. In connection with that, I would like to note that two people we have been focusing on for some time, Charlie Trie and Antonio Pan, recently were indicted in connection with their funneling of illegal money into the DNC. Our first hearings focused on both Mr. Trie and Antonio Pan, and we will be continuing into these areas, which clearly bear further scrutiny.

With that, Mr. Secretary, we want to thank you very much for your patience and for being with us today.

We stand adjourned.

[Whereupon, at 4:20 p.m., the committee was adjourned.]

[The prepared statements of Hon. Edolphus Towns and Hon. Paul E. Kanjorski follow:]

STATEMENT OF REP. EDOLPHUS "ED" TOWNS

BEFORE THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

JANUARY 29, 1998

Mr. Chairman, we have held several hearings on campaign finance reform. I am saddened to say, that this series of hearings on the Hudson Dog Track, is not likely to yield any insight to our inquiry.

As told to the Committee, the basic story is very simple. An Indian tribe wanted a casino. They contributed money to the Democratic party. A competing tribe did not want the first tribe to get the casino and so they gave more money to the Democratic party. The people in the local community and the Governor of the state did not want the casino. The first tribe did not get the casino, so they sued. Believing that some law somewhere had been violated, this Committee convened hearings and has raised several serious and unsubstantiated allegations.

Members of this Committee have alleged that administration officials committed improper and potentially illegal conduct. There is no evidence of any wrongdoing. It seems like every week the majority makes some unsubstantiated allegation. We hold hearings, the charges are reiterated, reputations are smeared but no proof is produced. Often the majority's contentions are specifically disproved. Then, the whole issue is dropped without apology or explanation. After the fuss dies down, a new round of allegations begins. So far, this hearing has followed that same pattern.

Second, the majority alleges that the Interior Secretary was involved in some wrongdoing because the application for the casino was rejected. Let me state this plainly. Career employees made the decision based on the law and the wishes of the community. Here, the system worked. The Federal officials complied with the wishes of the people and the local elected officials. We should applaud this example of local and federal cooperation.

Third, the majority like to point out that the winning tribe gave more money to the Democratic party than the losing tribe. They believe that this is suspicious. So today, we are here to speculate about the reason these long-time Democratic contributors gave money to the Democratic party. The majority would have us believe that the only agenda was the casino. This is an insult to these tribes and to their internal organizations. Tribal councils do more than oversee casinos. They oversee Governments. They run clinics, schools, police forces and every other function of a local government. For the majority to imply that casinos are their only concern casts a shadow over every tribal organization and its people. This kind of narrow thinking that may have led the tribes to make large contributions to the Democrats. Maybe they understood that a Republican controlled Congress would not be in their best interest. Maybe

they understood that a Republican controlled Congress would slash the budget and programs of the Bureau of Indian Affairs and other programs that are important to their people. Maybe they understood which party served their best interest.

If the majority of this Committee were truly concerned about Native Americans, we would use this hearing to illuminate their concerns and develop legislation to alleviate their dire economic situation. We could discuss the reasons that tribes have embraced gaming as their only rational economic option. In essence we could use the time and resources of this committee to help solve a problem. However, we have done none of that.

Further, let me remind the Committee that gambling is a controversial issue. There is currently a presidential commission studying several aspects of gaming. In every community in which gambling, casinos, racetracks and lotteries have been debated, there have been problems, protests and controversies. Gambling is a local issue and I have still not heard how or why this local Wisconsin problem should take several days of this Committee's time and energy in our discussion of campaign finance.

Finally, Mr. Chairman, I look forward to our having a hearing that is more than tangentially related to the mission of this committee-to ensure economy and efficiency in government.

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PAUL E. KANJORSKI
11TH DISTRICT, PENNSYLVANIA

COMMITTEE ON BANKING AND FINANCIAL SERVICES

RANKING MEMBER
SUBCOMMITTEE ON CAPITAL MARKETS, SECURITIES, AND GOVERNMENT SPONSORED ENTERPRISES

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

DEMOCRATIC WHIP-AT-LARGE

WASHINGTON OFFICE:
2353 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3811
(202) 225-6511

MAIN DISTRICT OFFICE
THE STEGMAIER BUILDING
7 NORTH WILKES-BARRE BOULEVARD
SUITE 400 M
WILKES-BARRE, PA 18702-5283
(717) 826-2200

KULPMONT OFFICE:
KULPMONT MUNICIPAL BUILDING
880 SPRUCE STREET
KULPMONT, PA 17834-1346
(717) 373-1541

TOLL FREE HELP-LINE
(800) 222-2346

Congress of the United States

Washington, DC 20515-3811

Written Statement of Paul E. Kanjorski
House Committee on Government Reform and Oversight
January 29, 1998

Mr. Chairman, as you probably remember, last month this Committee called up another cabinet secretary to testify before it. During that hearing, one of my colleagues referred to Attorney General Janet Reno as a "paragon of public virtue." Mr. Babbitt, too, almost always received similar praise from friends and foes alike until his unfortunate slip of the tongue when meeting with Mr. Paul Eckstein—whom I note that this Committee did not call up to testify today. In fact, throughout his long, distinguished, and challenging public career, Mr. Babbitt has gained a solid reputation for his professional integrity, veracity, and independence. It is unfortunate that some would use this exercise in political opportunism to sully that well-deserved reputation.

I, for one, will appreciate the candor, honesty, and responsibility that Secretary Babbitt will display today when making his opening statement. As I understand the facts, he made an excuse to get a persistent friend out of his office. In making that excuse, he may have not chosen his words well. At one point in time or another, I am sure that everyone on this Committee has chosen the wrong words. Choosing the wrong words is a simple blunder, not a major crime. I should remind those individuals who would continue to persecute Mr. Babbitt for this one, unintentional error: Everyone makes mistakes. As Edward John Phelps once said, "The man who makes no mistakes does not usually make anything."

Secretary Babbitt should know that I do not find his mistake disgraceful. Actually, I find it refreshing that a politician would admit a mistake and tell us how he learned from it. Instead, what I find disgraceful is this Committee's continued use of investigation by innuendo. Over the past year, this Committee has spent more than $3 million and thousands of hours pursuing one set of false allegations after another. Just because some people cannot accept the fact that the American electorate voted two times in a row to elect a Democratic president, the Majority has tried to use these dubious hearings to bankrupt a political party, damage countless professional reputations, badger respected individuals, intimidate career civil servants, and taint a presidency.

Over four days during the last two weeks, the Majority on this Committee has decided to beat a decision about a "dead doggy track" into the ground. In doing so, the Majority has often crafted conspiracies worthy of a plot in an Oliver Stone movie. They have also consistently tried to imply that political contributions changed this decision at the last minute. The facts tell us otherwise. The facts tell us that the career civil servants at the Department of the Interior used merit, not politics, to make their determination about an off-reservation casino application. The evidence also indicates that these persistent, fictional, rhetorical, and distorted charges are false.

Mr. Chairman, Secretary Babbitt's work over the last five years at the Department of the Interior has, by my estimation, regularly been a model for public service. Please know that I am proud of his constant efforts on behalf of the American people, his hard work to save our natural resources, and his intense desire to improve, preserve, and protect the environment for future generations. I, for one, am glad to know him.

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